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GOVERNMENT OF ALBERTSURPLUS

WHITE PAPER

respecting

the re-enactment of the

LEGISLATIVE ASSEMBLY ACT

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Abbreviations

May's: Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament (London). Unless otherwise stated, references are to the current 19th Edition.

H.C. Deb.: Parliamentary Debates (Official Report), 5th Series, House of Commons of the United Kingdom, 1909 - (current).

Present Act: Legislative Assembly Act, RSA 1980, c. L-10.

WHITE PAPER

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LEGISLATIVE ASSEMBLY ACT

Introduction

The Legislative Assembly Act and the Election Act are the two most important legislative cornerstones of parliamentary democracy in Alberta. Both were originally enacted in 1909 and while the Election Act has been the subject of three substantive re-enactments since then (1924, 1956 and 1980), the same is not true of the Legislative Assembly Act. The only re-enactment of the latter Act (in 1955) was primarily a consolidation and editorial revision with few reforms. Apart from that, the Act has since 1909 been the subject of numerous piecemeal amendments, most of them devoted to changes in electoral divisions, the rates of remuneration payable to Members and elected officers of the Assembly and of members of the Executive Council and, especially since 1954, to the addition of a multitude of exceptions to the general rule on disqualification related to contracts with the Crown. As a consequence, much of the text of the present Act has remained relatively untouched since 1909.

It is proposed that a complete revision and updating of Alberta's Legislative Assembly Act should be undertaken and to that end a Draft Bill has been prepared for a proposed Legislative Assembly Act, 1983. The Draft Bill is found in the Appendix to this Paper.

Unlike the present Act, the Draft Bill is divided into Parts, with some Parts having Divisions, to improve its readability. This Paper will discuss each of the Parts and Divisions of the Draft Bill in turn and, for

the convenience of the reader, is arranged in Parts and Divisions corresponding to those in the Draft Bill.

The Draft Bill embodies proposals for reform, some of them on subjects of some complexity and difficulty. No doubt Members of the Assembly will make suggestions with respect to the provisions of the Draft Bill. The objective is to produce a much improved and up-to-date version of this important legislation in keeping with modern needs and realities.

Interpretation Provisions of the Draft Bill

The present Act contains no interpretation provisions of general application. Section 1 of the Draft Bill, apart from defining a number of expressions, prescribes in subsection (2) some rules to determine when a person officially becomes a Member of the Legislative Assembly, while subsection (4) defines when a Member is "sworn in" for the purposes of the Act. Subsection (2) seeks to clarify when a person becomes a Member especially where an election is followed by a judicial recount or appeals. The date on which the candidate officially becomes a Member and the date on which he is sworn in will have significance in other provisions of the Draft Bill, particularly the provisions dealing with disqualification.

PART 1

THE CONSTITUTION AND POWERS OF THE LEGISLATIVE ASSEMBLY

Division 1

Composition, Sittings and Procedure

(1) Composition

It is proposed that the establishment and description of the various electoral divisions be removed from the Legislative Assembly Act and be made the subject of a separate Electoral Divisions Act. Section 2 of the Draft Bill is basically a restatement of section 1 of the present Act except that it is tied to the proposed Electoral Divisions Act in referring to the electoral divisions.

(2) Duration and sittings

Sections 4 and 5 of the Canadian Charter of Rights and Freedoms entrench in the Constitution of Canada the long standing rules that a provincial legislative assembly has a legal life of five years and that a provincial legislature must sit at least annually. Sections 3 and 4 of the Draft Bill follow the language of those provisions of the Charter as closely as possible.

Section 5 of the Draft Bill (prorogation) follows the language of the first part of section 5 of the present Act, the second part of that section being considered unnecessary.

Section 6 of the Draft Bill is not found in the present Act but is found in a number of the Legislative Assembly Acts in other provinces. It is

added to the Draft Bill to put beyond doubt a point about which there might otherwise be contention, namely, that a vacancy in the membership of the Assembly does not affect its proceedings.

(3) Procedure

Section 7 of the Draft Bill retains the same rules on voting as the present section 34 (a majority of the votes cast decides every question with the Speaker or Acting Speaker voting only to break a tie). Similarly, section 8 of the Draft Bill carries forward the present section 35 which requires an Assembly quorum of 20, including the Speaker.

Section 9 of the Draft Bill deals with Money Bills and follows the text of section 54 of the Constitution Act, 1867 rather than that of section 50 of the present Act which is a slight variation of it. The Assembly has for some years followed Standing Order 69 on this subject rather than section 50 of the Act. Standing Order 69 is virtually identical to section 54 of the Constitution Act, 1867, apart from being subdivided into clauses.

Division 2

The Assembly's Privileges, Immunities and Powers

Section 18 of the original British North America Act, 1867 gave the Parliament of Canada the power to confer privileges, immunities and powers on the House of Commons of Canada and its members subject to the condition that those privileges, powers and immunities could not exceed those that were at the passing of that Act held and enjoyed by the House of Commons of the United Kingdom and its members. The Parliament of Canada has conferred all of those privileges, immunities and powers on our House of Commons by what is now section 4 of the Senate of the House of Commons Act. The original B.N.A. Act, 1867 was, however, silent on the subject of the privileges, immunities and powers of the provincial legislative assemblies. A number of provinces (Alberta and Ontario not being among them) have by statute conferred on their respective assemblies and their members the same privileges, immunities and powers as are held and enjoyed by the House of Commons of Canada. By this device a province assumes for its assembly whatever privileges, immunities and powers were held and enjoyed by the House of Commons of the United Kingdom in 1867. The matter of whether a province could legislate in this way has been the subject of litigation especially in the early years of Confederation, and legal research indicates generally that a provincial legislature is capable of statutorily conferring any privileges, immunities and powers on its assembly if the statute is within its legislative competence. A provincial assembly and its members have only those privileges, immunities and powers its legislature confers on them by statute.

While an argument might be made that a provincial assembly and its members have some inherent privileges, immunities and powers by the mere fact of the assembly's existence and the inferred necessity of the assembly being able to control its proceedings and internal management, the surer course is to have those privileges, immunities and powers enacted by statute.

Since 1909, Alberta's Legislative Assembly Act has conferred on the Assembly certain specified privileges, immunities and powers without using the legislative device discussed earlier of assuming those held by the House of Commons of Canada. Those specified in the present Act are the following:

- the power to act as a court for judging and punishing acts that generally can be classified as breaches of privilege or contempts of the Assembly (the present sections 44 and 45);
- the power of the Assembly to punish by imprisonment (the present sections 45 and 47);
- compelling attendance of witnesses and the production of documents (the present sections 37, 38, 39 and 40(2));
- immunities of Members of the Assembly from civil action or prosecution, arrest, imprisonment or damages by reason of anything done or said in the Assembly (the present section 41);
- immunities of Members of the Assembly from arrest, detention or molestation for any cause of a civil nature (except a breach of the Act) while the Assembly is in session or during the 20-day periods before and after each session (the present section 42).

Other privileges and powers of our Assembly are mentioned twice in the statutes as though they existed but without being expressly conferred. One such case is found in section 13(2)(b) of the present Act which purports to preserve for the Assembly its powers of expulsion of Members in certain limited cases where the Court also has jurisdiction in respect of

disqualification. The other is found in section 2(3)(a) of the Public Service Act. Section 2(3) reads:

> (3) This Act does not impair or otherwise affect
>
> (a) the rights and privileges of the Legislative Assembly with regard to the appointment or removal of the officers and employees of the Assembly, or
>
> (b) an already established authority of the courts and judges over their officers.

The Draft Bill attempts to state the privileges, immunities and powers of the Assembly and its Members in a direct way rather than leaving anything to inference. To that end, Division 2 of Part 1 does the following:

- Section 10 confers on the Assembly, its Members, its committess whatever privileges, immunities and powers are presently held by the House of Commons of Canada, its Members, it committees and the members of those committees. The result is to appropriate for Alberta the privileges, immunities and powers held in 1867 by the House of Commons of the United Kingdom. Section 10 of the Draft Bill is, however, intended to be a residual category. There are sections in the Draft Bill (e.g., sections 11, 12, 13, 15 and 16) that confer specific privileges, immunities and powers in addition to the residual category. Subject only to constitutional considerations, Alberta's Legislative Assembly and its Members should not be in any lesser position in terms of privileges, immunities and powers than their counterparts in Ottawa and in most of the other provinces. In this way, the centuries-old parliamentary traditions that are the foundation of the independence of parliaments and assemblies based on the model of the British "Mother of Parliaments" will be better preserved in the interest of strengthening parliamentary democracy in Alberta.

- Section 11 of the Draft Bill is an expansion of the present section 44 and follows the equivalent section in Ontario's Legislative Assembly Act. The section makes it clear that the Assembly's powers are related to breaches of privilege and contempts by Members and non-Members alike.

- The provisions of Division 2 of Part 1 in the Draft Bill clarify their counterparts in the present Act in certain respects, as well as avoiding any constitutional difficulties. In particular, the provisions respecting immunity from arrest are modified so that they apply to arrest and detention under provincial law in civil matters only. This accords with the traditional nature of the immunity in the United Kingdom where historically Members of Parliament were

immune from arrest in civil causes only. In any event, the number of instances in which one can be arrested in a civil matter is now so limited that the immunity has little significance today.

- In Division 3 of Part 1 of the Draft Bill, section 23 confers on the Assembly powers in relation to the appointment, duties and dismissal of non-elected officers of the Assembly which will supersede the provisions in the Public Service Act if the Assembly chooses in any case to supersede that Act. (This matter is discussed in Division 3 of this Part of the Paper.)

- In Division 2 of Part 2 of the Draft Bill, section 40 states in a direct manner that the Assembly has powers of discipline over its members including expulsion (i.e., disqualification) on grounds other than those expressly dealt with in that Division. As well, section 13 allows for censure of Members by the Assembly in matters not involving disqualification.

In brief, the legislative scheme of the Draft Bill ensures that while specific powers are conferred on the Assembly by the Bill, the Assembly will nevertheless possess any other privileges, immunities and powers held by the House of Commons of the United Kingdom at the time of Confederation.

Division 3

The Officers and Staff of the Assembly

Sections 18, 19 and 20 of the Draft Bill deal with the offices of the Speaker, the Deputy Speaker and Chairman of Committees and the Deputy Chairman of Committees. They are a simplified modification of the equivalent provisions in the present Act, that is, sections 28 to 32. Section 20 creates the position of "Acting Speaker" for administrative as well as for procedural purposes in the Assembly chamber.

The major proposal in this Division of the Draft Bill is the creation of the "Legislative Assembly Office" as a distinct department of the public service of Alberta. This formalizes a situation that has existed for some years, at least since 1973 when the present Act was amended to give the Speaker tenure from the date of his appointment to the day prior to the

commencement of the first sitting following dissolution of the Legislature. Sections 21 and 22 of the Draft Bill follow similar provisions (enacted in 1977 and since) that created the Office of the Auditor General, the Office of the Ombudsman and the Office of the Chief Electoral Officer in order to provide for their independence from the Government in personnel and financial matters and to make them more responsible to the Legislative Assembly itself.

Under the Draft Bill (s.21) the Speaker will preside over the Legislative Assembly Office with the same status as a Minister of the Crown in relation to his department. The Legislative Assembly Office would consist of the non-elected officers of the Assembly (e.g., the Clerk, Clerk Assistant, Parliamentary Counsel and Sergeant-at-Arms) and the employees hired to assist in the work of the Office. The Deputy Speaker and Deputy Chairman would not be part of the Office but would fulfil the functions of Acting Speaker (or acting department head) in the event of the absence of the Speaker or a vacancy in the office of the Speaker (see section 20 of the Draft Bill).

As to the administrative role of the Speaker, see also the consequential amendments to the Public Service Act in Part 6 of the Draft Bill. By those amendments, the Speaker is made the department head for the purposes of the Public Service Act of both the Legislative Assembly Office and the Office of the Chief Electoral Officer. This would put the Speaker in the same position for personnel purposes as he presently is for financial expenditure purposes under Part 4 of the Financial Administration Act.

Section 23 of the Draft Bill represents a significant change and has been alluded to earlier in this Paper in the discussion of the privileges,

immunities and powers of the Assembly. Section 23 states in a direct way the powers of the Assembly in relation to its officers and staff, rather than leaving them to implication. Accordingly, section 2(3)(a) of the Public Service Act is repealed by one of the consequential amendments to that Act in Part 6 of the Draft Bill. (Section 2(3) is quoted earlier in this Paper.)

The combined effect of sections 21(2) and 23 of the Draft Bill is as follows:

- Salary classifications, terms of employment and other personnel matters coming under the Public Service Act will normally apply to the Legislative Assembly Office.

- The Speaker, as department head of the Legislative Assembly Office, will have the same powers in relation to that office that a Minister of the Crown has in relation to his department.

- The Select Standing Committee on Legislative Offices may, on the recommendation of the Speaker, direct that any regulation, order, directive or other decision under the Public Service Act or the Financial Administration Act be made inapplicable to, or varied in its application to, any particular officer, employee or any class of employees of the Legislative Assembly Office.

- The Legislative Assembly itself - if it chooses to do so by resolution or order - may supersede the Public Service Act in relation to the appointment, powers, duties and removal of all or any of the officers of the Assembly. In this way, the Legislative Assembly will be able to exercise traditional parliamentary authority over its officers if and when it decides it is necessary to do so.

PART 2

MEMBERSHIP OF THE ASSEMBLY

Division 1

Vacancies in Membership

(1) Disclaimer

A member-elect, that is, a Member who has not yet taken the oath of allegiance, has since 1909 been able to disclaim his seat. By a disclaimer, the Member surrenders his right to his seat in the Assembly. Section 25 of the Draft Bill is a modified and shorter version of sections 16 to 21 of the present Act.

(2) Resignation

Resignation is the appropriate way for a Member to voluntarily give up his seat in the Assembly after he has been formally installed in office by taking the oath of allegiance. Section 26 of the Draft Bill is a modified and shorter version of sections 22, 23, 24, 26 and 27 of the present Act. The proposed section 26 allows a written resignation to be given to the Deputy Speaker in the absence of the Speaker.

Section 26 of the present Act permits a Member to resign only after the notice of his election is published in The Alberta Gazette, and raises the question as to whether in the period between swearing in and the publication of the notice a Member is not able to resign at all. The proposed section 26 in the Draft Bill enables the Member to resign at any time after he is sworn in.

(3) By-elections to fill vacancies

A vacancy in the membership of the Assembly will occur on the filing of a disclaimer or resignation, on the death of a Member, on the voiding of an election of a Member by the court, or by the expulsion or disqualification of the Member. A vacancy is traditionally followed by a by-election to fill it unless dissolution of the Legislature intervenes so as to necessitate a general election.

Sections 24 and 25 of the present Act contain some provisions as to how the by-election process is to be implemented. Under section 24 a resignation is to be followed by the warrant issued by the Speaker or two Members and addressed to the Clerk of the Assembly and requiring the issue of the writ. Under section 25, a vacancy created in any way other than by resignation is followed by a "notice and requisition" by two Members to the Clerk of the Assembly who must then submit it to the Lieutenant Governor in Council who apparently must return it to the Clerk "endorsed as approved". Once returned to the Clerk, the Clerk then treats it in the same manner as a warrant under section 24. The two sections are now to a large extent obsolete inasmuch as the Clerk of the Assembly has not, since the creation of the Office of the Chief Electoral Officer in 1977, acted as the chief returning officer in provincial elections. Apart from that, there seems to be no reason why the procedures should be different under the two sections, nor is there any indication in section 25 of any time limit by which the notice and requisition must be returned to the Clerk "endorsed as approved" by the Lieutenant Governor in Council.

Section 27 of the Draft Bill provides one procedure for all vacancies however created, and sets a general six-month time limit running from the date of delivery of the warrant unless the vacancy occurs in the last year of the "legal life of the Assembly", that is, in the fifth year following the last general election. (The legal life of the Assembly is limited to five years by section 3 of the Draft Bill.) Section 27 of the Draft Bill is adopted from the equivalent provisions of Ontario's Legislative Assembly and the federal House of Commons Act which provide for the same time limits. Those provisions have been in force for many years and appear reasonable for Alberta to follow.

Division 2

Disqualification

Introductory

Disqualification of a Member of the Assembly results in his expulsion from the Assembly and the vacating of his seat.

The subject of disqualification is dealt with in the present Act in sections 6 to 15. No single group of sections in the Act presents more difficulty of interpretation or is in greater need of revision. The difficulties with the present sections are compounded by the fact that they also deal with or directly affect the eligibility requirements for candidates in provincial elections, matters which should properly be dealt with in the Election Act.

The many other difficulties with the present legislation will be discussed in this Division and in Division 3 of this Part.

It is not in the public interest for legislation on subjects as important as the eligibility of candidates in provincial elections and the disqualification of elected Members of the Assembly to continue in the obscure and inadequate state in which it now is and has been since 1909. Nor is it in the public interest or in the interest of fairness for election candidates and Members of the Assembly to be faced with the difficulty of accurately interpreting the present inadequate legislation to determine whether they may be liable to be held ineligible as candidates or disqualified as Members of the Assembly. It is timely that the rules on election eligibility and disqualification be restated in a way that will not diminish the traditional standards of conduct that the public expects of its elected representatives and will at the same time be sufficiently clear for those seeking election and those persons elected to the Assembly to determine whether they are within the rules or not.

(1) The present statutory grounds for disqualification

The grounds for disqualification under the present Act can be grouped as follows:

(a) Ineligibility as a candidate at the time of the Member's nomination

See section 11 of the present Act.

(b) The holding of a disqualifying office

Sections 6 and 7 disqualify a Member of the Assembly if he is also a member of the House of Commons or the Senate of Canada. These sections have remained unamended in this form since 1909, apart from statute revisions.

Section 8 deals more generally with disqualification by reason of holding of offices or places of employment from the Crown in right of Canada or of Alberta. Apart from the addition of clauses (e) and (f) to subsection (4) in 1975, section 8 is almost the same as it was in 1909.

Section 8(1), which states the general rule, reads:

> 8(1) Except as hereinafter particularly provided, a person
>
> (a) accepting or holding any office, commission or employment either
>
> (i) in the service of the Government of Canada, or
>
> (ii) in the service of the Government of Alberta,
>
> at the nomination of the Crown or of the Lieutenant Governor and to which is attached a salary, or any fee, allowance or emolument in lieu of salary, from the Crown or from the Government of Alberta, or
>
> (b) accepting or holding any office, commission, or employment of profit at the nomination of the Crown, or of the Government, or of any head of a department in the Government of Alberta, whether the profit is or is not payable out of the public funds,
>
> is not eligible to be a member of the Legislative Assembly or to sit or vote in the Legislative Assembly during the time he holds the office, commission or employment.

Exceptions to this general rule are set out in subsections (2), (3) and (4).

(c) Having an interest in a contract with the Crown in right of Alberta or accepting a payment of public money

The general rule of this subject is found in section 9 and the exceptions are enumerated in section 10. Section 9 is in virtually the same form as its predecessor in the 1909 Act and presently reads:

> 9 Except as otherwise provided in section 10, no person whosoever, holding or enjoying, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the

> interposition of a trustee or third party, any contract or agreement with Her Majesty or with any public officer or department,
>
> (a) with respect to the public service of Alberta, or
>
> (b) under which any public money of Alberta has been paid to and accepted by any such person for any service or work, matter or thing,
>
> is eligible to be a member of the Legislative Assembly or to sit or vote in it.

Where the 1909 Act contained four exceptions to the rule (the equivalent of the present section 10(a), (e.1), (f) and (f.1)), the present section 10 has thirty-three clauses containing a myriad of exceptions to the rule. At least sixteen of these clauses were first enacted in 1955 when the predecessor of the present section 10 was re-enacted following a Royal Commission inquiry into the affairs of certain Members of the Assembly.

The re-enactment in 1955 (with twenty clauses), and the addition of thirteen clauses since then, has created a situation where a number of the exceptions in section 10 are literally wider than the rule in section 9. The rule in section 9 relates to "any contract or agreement" but at least one of the exceptions in section 10 does not refer to a contract or agreement, namely, clause (1)(i) which refers to "receiving ... any tax refund, tax reduction or grant under Part 1 of the Property Tax Reduction Act". Under the latter Act, the benefit of the Property Education Tax Refund is given to the landowner without any contract or agreement being entered into between the landowner and the Crown. Similarly, it is difficult to show how a contract with the Crown is formulated, for example, when a person does nothing more than visit a physician who then bills the Alberta Health Care Insurance Plan on behalf of the patient for the physician's fees, yet section 10(b) of the present Act presupposes that a contract exists in such a situation. The effect of some of the clauses of

section 10 is to distort the literal meaning of section 9 which on its face is confined to contracts or agreements. Since the exceptions in section 10 must be taken to be within the rule in section 9, the latter section must be interpreted as extending to cases where there is a payment of public money made otherwise than pursuant to a contract. This anomaly makes any sort of precise interpretation of section 9 unreasonably difficult.

A considerable number of the clauses in section 10 have likely been spawned by the restrictive nature of clause (z) which reads:

> 10 Nothing in this Act renders any person ineligible to be nominated for or elected as a member of the Legislative Assembly or disqualifies him from sitting or voting in the Legislative Assembly, by reason only of the person
>
> > (z) having acquired any statutory or contractual right or liability not provided for in the preceding clauses, if
> >
> > > (i) the right or liability arises under or pursuant to an Act of the Legislature applicable to all members of the public or to all members of any class of the public,
> > >
> > > (ii) no special benefit or preference not available to other members of the public or to the class of the public to whom the statute applies is thereby obtained by that person, and
> > >
> > > (iii) no public money is, directly or indirectly, paid to or received by that person.

Because of the restriction in subclause (iii) above, there are few, if any, cases to which the exception can apply. If it were not for subclause (iii), many of the other exceptions in section 10 would not be needed since they involve situations where the Member receives a benefit under a government program on terms no better and no worse than those applicable to the public at large. Examples are the Alberta Health Care Insurance Plan, the Hospitalization Benefits Plan, the Alberta Crop Adjustment Assistance Program and the Farm Fuel Distribution Allowance Program. While a Member of

the Assembly should not be allowed to use his office to gain an undue benefit from the Crown, the Member should not be a "second-class citizen" in respect of benefits under government programs where the Member applies for the benefit under the same eligibility requirements as others and is given no special preference in respect of his application. The enactment of such a principle would obviate the need for piecemeal enumeration of so many exceptions after the fashion of those in the present section 10.

(2) The origins of our present disqualification rules on office-holding and contracts

Sections 8(1) and 9 of the present Act (the basic disqualification provisions as to offices and contracts) are almost identical to the original sections 9(1) and 10 of the 1909 Act. The latter sections were obviously copied, virtually verbatim, from sections 1(1) and 2 of "An Act further securing the Independence of Parliament", S.C. 1868, c. 25, the first post-confederation federal statute dealing with the subject of disqualification of members of the House of Commons of Canada. Section 1 of the 1868 Act is a modification of section 83 of the British-North America Act, 1867 (which provided temporary rules of disqualification of office-holders for the new provinces of Ontario and Quebec). Those two provisions from the 1868 Act - sections 1(1) and 2 - still have their nearly identical counterparts in sections 10(a) and 16 of the present Senate and House of Commons Act (R.S.C. 1970, c. S-8) and have been the model still followed in Manitoba, Ontario, Quebec, Newfoundland, Nova Scotia and Prince Edward Island, at least.

Sections 1(1) and 2 of the federal Act of 1868 (and its pre-confederation Canadian predecessors) were obviously influenced by the

English statutes then in force. The English statute law on disqualification was contained in a multitude of Acts going back to 1693. Most of them dealt with disqualification by reason of holding particular offices, but disqualification by reason of having an interest in a government contract was based primarily on the House of Commons (Disqualification) Act, 1782. The text of section 2 of the Canadian Act of 1868 is as broad or broader in scope than the English Act of 1782 and while the text is very much modified, the Canadian Act of 1868 uses many of the same expressions.

While the Parliament of Canada and most of the provinces have disqualification rules based on early English statutes, the United Kingdom Parliament has, in the last twenty-five years in particular, enacted broad reforms in its own legislation which are of special interest in the context of this Paper. Accordingly, it is appropriate to turn to an examination of the history of the evolution of the law and practice in the United Kingdom.

(3) The evolution of the law and practice on disqualification in the United Kingdom

The first English statute on disqualification of members of the House of Commons was enacted in 1693 and prohibited members from acting as collectors of certain duties and taxes. From then on the number of similar Acts proliferated, most of them relating to disqualification of holders of particular offices. Apart from those relating to offices, there were Acts dealing with various grounds of disqualification of Members including disqualification by reason of being a minor, alien, holder of certain

pensions, bankrupt, lunatic, traitor or felon or having an interest in a government contract.

The first British legislation on disqualification of government contractors was the House of Commons (Disqualification) Act, 1782 which was enacted as a result of some scandals over contracts involving the supply of money and war materials during the American Revolution. The principal section read as follows:

> (1) From and after the end of this present session of Parliament any person who shall directly or indirectly himself or by any person whatsoever in trust for him or for his use or benefit or on his account undertake, execute, hold and enjoy, in the whole or in part, any contract, agreement or commission made or entered into with, under or from the commissioners of his Majesty's Treasury, or of the Navy or Victualling Office, or with the master general or board of Ordinance, or with any one or more of such commissioners, or with any other person or persons whatsoever for or on account of the publick service,
>
> .....
>
> or shall knowingly and willingly furnish or provide in pursuance of any such agreement, contract or commission which he or they shall have made or entered into as aforesaid, any money to be remitted abroad or any wares or merchandize to be used or employed in the service of the publick, shall be incapable of being elected or of sitting or voting as a member of the House of Commons during the time that he shall execute, hold or enjoy any such contract, agreement or commission or any part or share thereof, or any benefit or emolument arising from the same.

The provision is deliberately divided into two parts here for a reason which will appear below. The first part is quite general and is the part on which Alberta's present section 9(1) is based. The second part goes on to specifically prohibit anyone from "knowingly and willingly (providing) any money to be remitted abroad or any wares or merchandize to be used or employed in the service of the publick".

Alberta's present section 10(a) can be traced back to section 3 of the English Act of 1782 which read:

> 3. Provided always, that nothing herein contained shall extend, or be construed to extend, to any contract, agreement, or commission, made, entered into, or accepted by any incorporated trading company in its corporate capacity, nor to any company now existing or established and consisting of more than ten persons, where such contract, agreement, or commission shall be made, entered into, or accepted for the general benefit of such incorporation or company.

An Act in 1801 applied all then existing disqualification rules to the new Parliament of Great Britain and Ireland but apart from that, the 1782 Act remained in force until its repeal in 1957. However, the scope of the 1782 Act was drastically cut back by the House of Commons Disqualification (Declaration of Law) Act, 1931. The long title of the 1931 Act said it was "An Act to remove doubts as to the scope of (the 1782 and 1801 Acts)". Its only substantive provision is a declaration that the 1782 and 1801 Acts extend only to the second part of the main prohibition of the 1782 Act mentioned above, that is, to contracts "for the furnishing or providing of money to be remitted abroad or wares or merchandise to be used or employed in the public service".

A Select Committee of the Commons was appointed in 1941 to examine the subject of disqualification "by reason of the holding, or the acceptance of, Offices or Places of Profit under the Crown." The need for the examination, especially in respect of the matter of offices, was expressed shortly before the appointment of the Committee by the Rt. Hon. Winston Churchill who said (on February 27, 1941):

> ". . .the whole of this question of offices and places of profit is in a state of great legal complexity and obscurity . . . the law may strike here or there by accident or caprice, without any reference to any principle of logic, or reason or constitutional doctrine." (Quoted in H.C. Deb. 9 Nov. 1955, p. 1857)

The Committee (called the "Herbert Committee") reported in 1941 but no official action was taken on its work until July 12, 1955, the date of

introduction of a Bill which closely followed the recommendations in the Herbert Committee Report.

The Bill dealt with office-holding by setting out three schedules - one which named specific disqualifying offices, a second which described certain classes of offices and employments in general terms as well as some specific offices, and a third which contained rules for defining in some detail which offices were to be treated as "under the Crown" and which were to be treated as "paid". Even though the Herbert Committee did not examine disqualification of members contracting with the Crown, the Bill dealt with the subject but did nothing more than to re-enact, with only slight modifications, the 1931 Act. (As explained earlier, the 1931 Act was a restatement of the second part of section 1 of the 1782 Act quoted above.) Even the sponsor of the Bill admitted the illogic of this position but rationalized it on the ground that "there has been no general demand for extension of the scope of the existing (1931) disqualification" and that any drastic extension should not be undertaken "without a previous investigation along the lines of the Herbert Committee's inquiry".

The Bill also provided for the abolition generally of the various actions for pecuniary penalties by common informers in favour of an action for a declaration of disqualification, subject to a power in the House of Commons to excuse the Member if he had since removed the cause of his disqualification.

After second reading, the Bill was referred to another select committee chaired by Sir Patrick Spens, which met twenty-eight times before presenting its report. The Bill on which it had reported had in the meantime died on the order paper, and a second Bill was introduced in the

next session on November 19, 1956 and reflected a number of important changes recommended by the Spens Committee. (This Bill will be referred to as "the second Bill".)

The Spens Committee report and the second Bill, which eventually was enacted as the House of Commons (Disqualification) Act, 1957, constitute a watershed in the English law because they resulted in simplification of the disqualification rules on office-holding, abolished all statutory disqualification rules related to government contractors, repealed a multitude of old statutes that took more than ten pages to list, and effectively abolished the common informer actions for penalties.

As to disqualification of office-holders, the approach in the second Bill was significantly different from what it was before then. The Bill stated the rule in a more direct way: no Member is to be disqualified by reason of holding an office unless the office is specifically named in the Act. The Bill had a Schedule of almost eleven pages listing the disqualifying offices.

As to the choice of offices as disqualifying offices, the principle on which the House was guided was succinctly stated by Mr. G.R. Mitchison (Kettering) in the second reading debate on the second Bill:

> The reason for the Bill is the long standing anxiety of the House to avoid two things. One is undue patronage and the other is incompatibility between membership of the House and the holding of other offices or the doing of other things, an incompatibility which may be an incompatibility of duty or the physical incompatibility of being unable to perform both functions properly. (H.C. Deb. 9 Dec. 1956, p. 1285)

In the Spens Committee's deliberations and in the debates on the second Bill, there was much discussion of the matter of "reverse disqualification." The central question was: should the holding of the

office disqualify the holder for membership of the House of Commons, or should membership of the House disqualify the Member from holding the office? The latter part of the question refers to "reverse disqualification" and, if applied literally, would mean that a Member could never lose his seat in the House because of holding some other office, but would instead lose the other office. The argument in favour of reverse disqualification was that "it is better that an elected Member lose an office than that he should lose his seat in the House of Commons." The principle of reverse disqualification was rejected by the Spens Committee and eventually rejected by the House because "the existing principle leaves the House in more complete control of it composition and procedure, and the introduction of 'reverse disqualification' might lead to conflict between the House of Commons and the Courts".

As to disqualification of government contractors, the second Bill presented a completely different approach. The most controversial of the changes in the second Bill was the replacement of the previous clause on government contractors with a clause which read:

> 9. A person shall not be disqualified for membership of the House of Commons by reason of his having any pension from the Crown or by reason of any such contract, agreement or commission for or on account of the public service as is described in the House of Commons (Declaration of Law) Act, 1931.

The reports and the debates on the second reading of the second Bill indicate that the Select Committee and the Commons entertained considerable misgiv about Clause 9 and did a good deal of soul-searching about it. The removal of the disqualification rule appears to have been rationalized in these terms (according to the debates and the summary in the 16th edition of May's at page 220):

- The existing law was indefensible, obscure, and anomalous and was enacted when the great bulk of trade and commerce was transacted by individuals and not corporations. For example, an M.P. contracting to construct a huge building was not disqualified but an M.P. who supplied a truck-load of bricks for the same building was disqualified.

- Evidence before the Committee showed that no case involving any sort of scandal in connection with a government contract had occurred during the previous hundred years.

- The House had sufficient power to discipline or expel a Member in the event of a scandal over a contract.

- Since no one wished to leave the law in its present state, the choice was to repeal it or replace it with complex legislation covering all variations of contractual dealings between the Government and its agencies on the one hand and, on the other, commercial trade and professional organizations in which a Member might directly, or indirectly as director, shareholder or otherwise, happen to participate. An alternative, also rejected, was legislation aimed at providing publicity for government contracts that might otherwise become the means of secret patronage or undue influence.

- While the ground of disqualification itself was to be removed from the statutes the Government agreed that reconsideration should be given of the rules and practice of the House relating to disclosure by Members of any pecuniary interests when they are speaking or voting, with a view to improvement of the rules and practice.

The reconsideration of the rules and practice apparently did not bring official results until May 22, 1974 by way of the passage of a resolution on disclosure and a second on the creation of a Select Committee whose report was eventually accepted, with certain exceptions, on June 12, 1975. (See May's at pages 407-412 on "Votes on Matters affected by Personal Pecuniary Interest" as well as the present rules and practice on disclosure in Appendix II of May's.)

While the rules of the House now require the registration of certain interests in the "Register of Members' Interests", there is a convention that a Member will, as a matter of course, declare his interest in the House even though he had already entered it in the Register. Members of

the House are apparently scrupulous about declaring their interests in order to avoid any suggestion of personal dishonour or contempt of the House or of "unavowed motives".

The present British position on disqualification of members contracting with the Crown is, in summary:

- The House of Commons abolished its statutory rules on the disqualification of government contractors in 1957, some 175 years after the enactment of the Act of 1782.
- The House now relies solely on the efficacy of its rules on disclosure of pecuniary interests.
- The system seems to be self-disciplining, apparently because the Members are vigilant, as a matter of personal honour, in declaring their interests both in the Register of Members' Interests and in the House.
- A Member having a pecuniary interest in the subject-matter of a debate is apparently not precluded from participating in the debate and even moving motions and amendments, but is not allowed to vote (see May's page 411.)
- May's (page 407) indicates that while a member must not vote on a matter in which he had a "direct pecuniary interest", in order to operate as a disqualification, the interest must be "immediate and personal, and not merely of a general or remote character". Objections based on the rule are normally overruled or found out of order. This sort of "direct pecuniary interest" apparently is distinguished from an indirect interest, as, for example, when the member is a shareholder of a corporation.

The House of Commons Disqualification Act 1975 repealed and replaced the 1957 Act and is not appreciably different in principle. Its object seems to have been to bring the 1957 Act up to date. Section 9 of the 1957 Act (which expressly abolished statutory disqualification rules respecting members contracting with the Crown and is quoted earlier in this section) was simply omitted in the 1975 Act which is now completely silent on the subject. The 1975 Act is still in force today.

(4) Recent legislative changes in Canada

(a) British Columbia

The Constitution Act of British Columbia was passed in 1979 and states the rule on disqualification of office-holders and contractors in section 25. This section states the prohibition only in terms of the acceptance of public money as the holder of an office or place of employment or under a contract. Section 25 does not prohibit the holding of an office or place of employment as such, as long as the holder receives no public money from it. Similarly, the section does not prohibit the member from being a party to a government contract as long as no public money is paid under the contract to him or to a corporation of which he is a director or senior officer or shareholder to whom section 5(1) of the Financial Disclosure Act applies. There are, however, some exceptions to the rule in sections 26 and 33.

One feature of the Act that is somewhat different from the legislation of most provinces (except, to some extent, Manitoba's) is that it spells out clearly that disqualification proceedings based on section 25 can only originate by way of a motion in the Assembly itself and only the Assembly can adjudicate the allegations and disqualify the member.

(The Draft Bill takes a similar approach in spelling out the jurisdiction of the Assembly in matters of disqualification although it retains a role for the courts as well, unlike the present British Columbia legislation.)

(b) Saskatchewan

This Province passed two Acts in 1979, the Legislative Assembly and Executive Council Act and the Members of the Legislative Assembly Conflict of Interests Act, following an extensive two-year examination of the subject of conflict of interest by the Saskatchewan Law Reform Commission.

The prohibitions against the holding of offices and "participating in a government contract" are set out in the second of the two Acts and the provisions on government contractors in particular are lengthy and extremely complex. A breach of any of the prohibitions leads initially to a prosecution and conviction for the breach, but disqualification occurs only when a second conviction is obtained for the offence of failing to remedy the first breach within 60 days after the first conviction.

It is not recommended that the Saskatchewan approach be adopted. Apart from its complexity, the whole matter of disqualification is, under Saskatchewan's Act, to be determined solely in a quasi-criminal forum where the burden of proof in criminal cases prevails, that is, proof beyond a reasonable doubt. Historically, disqualification has been a purely civil matter. The necessity for two successful prosecutions makes actual disqualification so unlikely that Saskatchewan's legislation should not be viewed as a model for Alberta.

(c) Manitoba

Manitoba's present Legislative Assembly Act is in many ways not unlike Alberta's but in respect of disqualification it has some distinctive features such as a recent provision providing for disqualification based on a conviction for an indictable offence coupled with a sentence of imprisonment of five years or more. Another is a provision which, curiously, gives its Select Standing Committee on Privileges and Elections sole jurisdiction to determine whether a Member comes within one of the many exceptions in section 19(1) and (2) (the equivalent of Alberta's section 10) but not whether he comes within the disqualification rule itself (the equivalent of Alberta's section 9).

The law in Manitoba may soon change rather substantially, however, by reason of the introduction in its Assembly last December 13 of Bill 18 for the "Legislative Assembly and Executive Council Conflict of Interest Act". Since the Bill is a Government Bill and accordingly stands a good chance of being enacted in 1983, it is timely to mention it here. The principal features of the Bill are the requirement to file statements of assets and interests and various provisions requiring a member with a pecuniary interest in a matter before the Assembly or an Assembly Committee to disclose the general nature of his interest to the Assembly or committee, to withdraw from the meeting and to refrain thereafter from influencing the matter. Similar rules are prescribed for Ministers in matters before Cabinet or matters involving the exercise of a Minister's statutory or regulatory functions.

The disqualification rules respecting office-holding are expressed in the same terms as Manitoba's present legislation. The Bill is,

however, completely silent on the matter of disqualification by reason of contracting with the Crown. The Bill's approach to government contracts is therefore somewhat similar to that taken in the present legislation in the United Kingdom. The list of assets and interests to be included in a disclosure statement does not need to show interests in contracts with the Crown.

(d) New Brunswick

New Brunswick's Conflict of Interest Act was passed in 1978 and defines various categories of "conflict of interest" in relation to M.L.A.'s, Cabinet Ministers and provincial officials. The rules are not appreciably different than those in the earlier legislation (or Alberta's present Act), but the consequences of a breach are quite different. Under New Brunswick's legislation, a member can be pursued in one or both of the following ways:

- A civil proceeding initiated by any person before a "designated judge" who, if the allegation of interest is established, can direct the member to comply with an order to remedy the circumstances that gave rise to the conflict of interest.

- A prosecution which, if successful, can lead to a maximum of $10,000 fine or two years imprisonment, or both, in addition to the making of an order against the member to remedy the circumstances that gave rise to the conflict of interest, failing which the member can be found guilty of contempt in the face of the Court.

The New Brunswick legislation is not likely to be a good precedent for Alberta to follow since there is nothing in it that indicates that either the civil procedure or a conviction in the prosecution leads to actual disqualification, or that the Assembly itself has jurisdiction to disqualify a member.

(5) The approaches to disqualification in the Draft Bill

The Draft Bill reflects the following proposals in relation to disqualification:

- A clear distinction is made between the rules for eligibility of persons as election candidates and the rules for disqualification of duly elected Members of the Legislative Assembly. It is proposed that all rules on the eligibility of candidates should properly be in the Election Act only, and that all of the rules on the disqualification of Members be contained in the Legislative Assembly Act only. The subject of the eligibility of election candidates is discussed below in Division 3 of this Part of the Paper.

- The "common informer" action for the pecuniary penalties of $200 a day under the present section 15 would be abolished and replaced by another form of civil proceeding available to any eligible voter.

- The privileges and powers of the Legislative Assembly in relation to disqualification are expressly stated and not left to inference. While the Assembly's rights in respect of the discipline of its Members based on ancient parliamentary traditions are retained (as they must be), the role and jurisdiction of the Court must also be clearly stated in the Act. There should be no lack of clarity as to what is to be done in a court proceeding and what is to be done in a proceeding in the Assembly.

- With one exception, the Assembly itself will be the final arbiter of disqualification. The Assembly will have a residual or overriding jurisdiction to declare a Member disqualified for cause, whether the cause is specified in the Act or not and whether the Court makes a finding of disqualification or not. The exception is disqualification by reason of loss of Canadian citizenship which will be exclusively in the jurisdiction of the Court.

- The rules on disqualification of office-holders follow the principle in the current British legislation but the principle of "reverse disqualification" is applied in relation to certain offices created under Alberta legislation and to Alberta Government employees. (This subject is primarily dealt with in section 31 of the Draft Bill and is discussed below in this Division of the Paper.)

- The present disqualification rules on government contractors and payments of public money (sections 9 and 10 of the present Act) are clearly unsatisfactory by reason of their complexity and obscurity. While the rules should continue to be stated in legislation (and not left entirely to the Standing Orders of the Assembly on voting, after the fashion of the rules of the House of Commons at Westminster) the rules should be made clear in the interest of Members and the public. At the same time, they should not be seen as possibly leading to a lessening of the standard of conduct that has historically been expected of Alberta's elected representatives.

Accordingly, the Draft Bill takes a fresh approach that is aimed at meeting both objectives. This subject is dealt with primarily in sections 28, 29, 32, 33 and 34 of Division 2 of Part 2 of the Draft Bill and is discussed in more detail later in this part of the Paper.

(6) The Draft Bill's approach to disqualification in relation to office-holders

The Draft Bill adopts the approach in the British Acts of 1957 and 1975. The objective is to identify those offices and places of employment that will lead to disqualification so that the election candidate or elected Member will not be in any doubt as to what they are.

Section 31(1) continues the specific reference to members of the House of Commons and Senate of Canada, to holders of offices from the Government of Canada and to employees of the Governments of Canada and Alberta. As to holders of offices from the Crown in right of Alberta, the Schedule to the Draft Bill identifies the disqualifying offices to which appointments may be made by the Crown. The Schedule includes the twenty offices enumerated in section 8(4)(e) of the present Act. It may be that other offices should be added to the Schedule and this can be done as Members of the Assembly give consideration to the Draft Bill.

With one exception, the fact that a person holds a disqualifying office should not, by itself, be a ground for making that person ineligible as a candidate in a provincial election. The exception relates to members of the House of Commons or Senate of Canada, since the Canada Elections Act makes members of provincial assemblies ineligible to be candidates in a federal election. Apart from that exception, there need be no restrictions on candidacy merely on the basis of the holding of an office. If a government employee, for example, wishes to run in a provincial election,

there should be no rigid rule in the Election Act that prevents him from doing so. If the employee is to make the kind of effort normally needed to win an election, he will have to obtain leave of absence to do so. (Current practice in Alberta allows for leave of absence in these cases.) If the employee loses the election, he will go back to his job, but if he wins, then, and only then, does the issue of conflict of interest arise. Section 1(2) of the Draft Bill spells out the rules for determining when the candidate legally "becomes a Member". In a close election contest, with appeals having been taken, the official outcome may not be known until it is decided by the courts. When the outcome is known after any appeals, the candidate should not automatically be disqualified just because he is then still technically in the employ of a government.

In the case of Alberta Government employees and of the holders of the offices enumerated in the Schedule, section 31(3) of the Draft Bill provides an additional safeguard to prevent an inadvertent disqualification by adopting the principle of "reverse disqualification". By doing so, the official election of a Member will automatically operate to terminate the employment or appointment if he has not sooner resigned from it. In that way he cannot be affected by any technicality involving the validity of his resignation or any inadvertent omission to tender it beforehand.

The Draft Bill cannot apply "reverse disqualification" to persons holding an office or employment from the Government of Canada because Alberta cannot validly legislate so as to terminate the office or employment in those cases.

Under the Draft Bill, the critical time for a federal employee or office-holder is the time of swearing in. Once the election outcome is

known and the federal employee or office-holder is officially elected, he should not be automatically disqualified. The Draft Bill allows the newly-elected Member in such a case some time in which to arrange his affairs and resign from his employment or office before being sworn in.

(7) The Draft Bill's approach to disqualification in relation to Crown contracts and the acceptance of payments of public money

This portion of the Paper will deal with the subject of contracts but it should be kept in mind that the Draft Bill takes a very similar approach to disqualification in relation to the acceptance of a payment of public money otherwise than under a contract. The most common way for public money to be paid to a Member, otherwise than under a contract or by way of indemnities, would be under government programs available to Albertans generally, or to particular segments of the population of Alberta, and on standard terms prescribed by law. The rules on payments of public money are found in section 33 of the Draft Bill.

Disqualification in relation to contracts is dealt with primarily in sections 28, 29 and 32 of the Draft Bill, which will be discussed now.

(a) Parties to the contract

In order for a contract to come under section 32 of the Draft Bill, one of the parties must be the Crown in right of Alberta itself or one of its agencies, and another of the parties must be the Member or "a person directly associated with" a Member, whether there are other parties to the contract or not.

Section 28(1)(a) defines "Crown" to include a "Provincial agency", an expression which in turn is defined in section 28(1)(b). The latter definition is tied to the interpretation provisions of the Financial Administration Act. As to Provincial agencies, the general effect is that a contract can come within section 32 if one of the parties is a body whose members (or a majority of them) are appointed or designated by statute, by the Lieutenant Governor in Council or by a Minister of the Crown. In short, "Crown" includes bodies effectively controlled by the Crown in right of Alberta. Excluded from this category, however, are the corporations listed in section 2(5) of the Financial Administration Act and which are largely exempted from the application of that Act by reason of their independence from the Government. Section 2(5) includes organizations such as the boards of universities, public colleges, technical institutes and hospitals whose members are appointed by the Lieutenant Governor in Council, as well as the Alberta Heritage Foundation for Medical Research.

(b) Persons directly associated with a Member

Section 9 of the present Act is addressed to a Member who "directly or indirectly, alone or with any other, by himself or with the interposition of a trustee or third party" holds or enjoys, undertakes or executes a contract. Section 9 on its face indicates that it must be the Member who is the one receiving the contractual benefit whether he obtains it "directly" (by himself) or "indirectly" (through others). The section infers that where a third party is involved, it is the Member who is knowingly and wilfully using the third party to obtain indirectly a benefit that he chose not to, or dared not to, obtain in his own name.

There are difficulties in interpreting section 9, and it is recommended that a new approach be taken in relation to third parties. The Draft Bill proposes the new concept of "a person directly associated with a Member". The classes of these third parties should, first of all, be expressly set out in the new Act. Those classes should include persons whose association with a Member is so direct and close that any benefit arising from a contract with that person will either result in a benefit to the Member or make it appear that the Member is gaining a benefit under the contract, in some way by his association or connection with the other person. It is important from the standpoint of maintaining the traditional standards of conduct for Members that a Member not only not gain a benefit from a contract in the circumstances prescribed by the Act, but that there be no appearance of a benefit by reason of the Member's direct association with a party to a contract.

Section 29(1) of the Draft Bill identifies the following classes of persons as "persons directly associated with a Member" for the purposes of the disqualification provisions in Division 2 of Part 2.

(i) The Member's spouse, except in cases of legal separation

It may in one sense seem to impose a hardship on the spouse of a Member if the law should say that the Member's spouse, as a separate legal personality with his or her own resources, will jeopardize the Member's seat in the Assembly by entering into a contract with the Crown. Nevertheless, the relationship of husband and wife is normally so personal and close that public knowledge of any contract between the Crown and the Member's spouse will immediately give rise to apprehension of abuse of the Member's office and to an appearance of wrongdoing, regardless of how independently the spouse had acted in negotiating the contract. Even the appearance of wrongdoing in these situations should be avoided. A married person who contemplates running for election as a Member will normally make the decision in consultation with, and usually with the concurrence of, his or her spouse, and in making that decision the matter of the restrictions on the spouse's independence of action in contracting with the Crown will have to be weighed, along with all other relevant considerations. There is an exception to the rule, however, in cases where the Member and the spouse are actually living apart and are separated by reason of a judicial separation or a written separation agreement. This exception is reasonable since the Member should not be held responsible for the action of the spouse in these situations.

(ii) Corporations

Section 29(1)(b) and (c) specifies that a corporation will be directly associated with a Member if the corporation has share capital and carries on business or activities for profit or gain and

- the Member is a director or senior officer (as defined) of the corporation, or

- the Member is the beneficial owner of shares of the corporation other than publicly-traded shares or shares held in a "blind trust".

The Draft Bill would not require any fixed limit on shareholdings in a corporation but at the same time it would permit the Member to sever his direct association by placing his shares in a "blind trust". A blind trust is a trust in which the shares are held by a trustee with complete discretion as to the sale or other disposition of the trust assets and without any direction or involvement by the Member in the administration of the trust, and without any communication between the Member and the trustee that would permit the Member to be made aware of the trustee's transactions with the trust property or the identity of the assets making up the trust from time to time. The essential criteria for a blind trust are set out in section 29(2) of the Draft Bill.

The Draft Bill would also allow a Member to beneficially hold publicly-traded shares of a corporation having a contract with the Crown. The expression "publicly-traded shares" is extensively

defined in section 28(1)(c), (2), (3) and (4) of the Draft Bill and includes shares trading on a recognized stock exchange in Canada or the United States and shares that are sold as part of a distribution to the public which normally will be done through brokerage houses following the filing of a prospectus with a regulatory agency such as the Alberta Securities Commission. These provisions are adapted in part from similar ones in sections 1(i) and 3 of Alberta's Business Corporations Act.

(iii) Partnerships

If a Member is in partnership with others, it is normally on the basis that the Member will be actively engaged in the partnership's business or, if not, that he will have a close association with it and have access to its records. If a Member is in a partnership, the partnership must be aware of the restrictions section 29(1)(d) of the Draft Bill would put on it in terms of contracting with the Crown and must govern itself accordingly if it wishes to avoid the possibility of disqualification of the Member-partner.

A corporation can be a member of a partnership and so section 29(1)(d) extends to cases where the partnership has as one of its partners a corporation directly associated with the Member by reason of section 29(1)(b) or (c).

(iv) Agents

Obviously, a person or group of persons acting as an agent of a Member with actual authority is a person directly associated with the Member. Section section 29(1)(e) of the Draft Bill.

(c) The statutory basis for disqualification of contractors

As explained elsewhere in this Paper, section 9 of the present Act is a sweeping prohibition subject to a bewildering array of exceptions in section 10 subdivided into thirty-three clauses. The result is that the Member can be literally disqualified on the basis of any Crown contract, and must come within one of the exceptions if he is to avoid disqualification. The possibility of a Member being disqualified on the sheerest of legal technicalities and without regard to any mitigating circumstances is very real on a literal reading of the two sections. Section 9 is so broad, it will even catch the case where the Member is not even aware of the existence of a contract (e.g., where an Alberta Government employee purchases any commodity or service which ends up being paid for by the Government, and the Member is a part owner of the business which the Government employee happened to deal with) or where the Member was quite unaware of the identity of the buyer. The Draft Bill seeks to achieve a balance of fairness without lowering the accepted standards of conduct for Members and at the same time it attempts to make the rules sufficiently clear to the public and the Members that it will be easier to determine when a ground for disqualification arises. It seeks to spell out the rules in the interest of election candidates, elected Members and the public generally.

Section 32(1) contains the basic rules on disqualification in relation to Crown contracts. First, it sets out five classes of contracts that are in an absolutely prohibited category. These prohibited categories are:

(i) treasury branch loans;

(ii) the conveyance to the Crown of any estate or interest in land except where the land is expropriated and the compensation is determined under the Expropriation Act, or where the Court certifies that the consideration for the land is fair and reasonable;

(iii) public works contracts;

(iv) a loan or guarantee from the Alberta Agricultural Development Corporation;

(v) a loan or guarantee from the Alberta Opportunity Company.

Categories (i), (ii) and (iii) have their counterparts in section 10(a), (g) and (n) of the present Act. They should remain as prohibited contracts, if for no other reason than historical considerations going back to the Macdonald Royal Commission inquiry of 1955. Categories (iv) and (v) are included because loans and guarantees available from those Provincial agencies are analogous to treasury branch loans and should be similarly prohibited.

Section 32(1) provides a sixth category of prohibited contracts in these terms:

> (f) a contract to which the Crown is also a party, other than a contract referred to in [categories (i) to (v) above] if the Member or the person directly associated with the Member received a preference from the Crown in entering into the contract or received a benefit under the contract not available to other members of the public under contracts of the same class.

In the cases of categories (i) to (v) above, it will not be open to a Member to demonstrate that he received no preference in arranging the

contract. In all other cases, however, the absence of preferential treatment and the absence of any misuse of the Member's office will be the most relevant and paramount consideration.

The exceptions in section 10 of the present Act and elsewhere (e.g., section 43 of the Alberta Government Telephones Act respecting telephone service contracts) are aimed at putting Members of the Assembly in the same position as other Albertans in relation to certain classes of contracts and of benefits under government programs where the contracts or benefits are available to all eligible members of the public (or of a specified class of the public) and the Members are not receiving any preferential treatment. It is important that the Member should not misuse his office as a Member to gain a personal benefit under a Crown contract in circumstances where the Member has been given preferential treatment in obtaining the contract, or, where the Member gained a benefit under the contract not available to others under contracts of the same class even though he was given no preference in entering into the contract in the first place. At the same time, Members of the Assembly should not be "second-class citizens" in respect of contracts that the Crown enters into routinely under a variety of government programs.

While section 32(1) enumerates six categories of prohibited contracts, it should be remembered that under section 40 of the Draft Bill the Assembly will have a residual power to disqualify a Member on any ground that is sufficient in the Assembly's opinion, whether the ground is specified in the Act or not. Thus, any scandalous conduct by a Member in relation to a Crown contract could be the subject of disqualification proceedings. The significance of the enumeration of

the six categories in section 32(1) of the Draft Bill is that it spells out the cases that can be made the subject of court proceedings under section 38 leading to a judicial finding of disqualification.

(d) Disqualification of a Member in relation to a Crown contract in existence at the time he became a Member or before.

If a person becomes an Member of the Assembly for the first time and is already a party to a Crown contract, he could not be said to have obtained the contract by the misuse of an office he did not have. A Member in that situation might in any event find it difficult or legally impossible to terminate the contract or to remove himself as a party to the contract. If, for example, a newly-elected Member had financed a farming operation with assistance from the Alberta Agricultural Development Corporation, he could well be forced to suffer a substantial loss if the law required him to renogotiate his financial arrangements with another lender. If the party to the contract is a person directly associated with the Member, the Member may well not be able to legally direct the other person to terminate the contract. A Member should not be liable to disqualification in these kinds of circumstances in respect of a pre-existing contract. Accordingly, section 32 of the Draft Bill ties disqualification to the case where the contract is entered into "while he is a Member".

A difficulty can arise, however, where a contract comes to the end of its term while the Member is still in office. The contract may provide that the Member or the Crown has the option of renewing the contract for a further term, as in the case of a lease. The renewal provision may or may not provide for arbitration in case of disagreement

over a material matter such as the rental rate for the renewal term. In any case, the renewal might be construed to be a new contract and therefore one that could come within the prohibited categories in section 32(1) of the Draft Bill. In other situations, the contract may not provide for its own renewal but it may nevertheless be to the Crown's advantage in the circumstances that the contract be replaced with a new one with the same parties. To meet these cases, section 32(2) of the Draft Bill permits the renewal or renegotiation of the Crown contract only with the approval of the Court. The Court must not only approved the terms of the renewal or replacement contract as being fair and reasonable, it must also be satisfied that the process by which the contract was renewed or renegotiated was also acceptable and involved no preference in favour of the Member or the person directly associated with him.

(e) Disclosure by Members

Section 35 of the Draft Bill provides for disclosure by Members of the persons with whom they are directly associated from time to time. Each Member would be required to furnish this information periodically to the Clerk of the Assembly showing where appropriate the date when the association began or ended. If a Member is re-elected, he would furnish the same kind of information with respect to the period intervening between dissolution of the Assembly and his re-election. The Provincial Treasurer would then be required after the end of each Government fiscal year to prepare a report showing the payments made to each Member and to each person directly associated with him where the payments related to a liability of the Crown that arose during the period of the direct association. The report would be tabled in the Assembly upon being

completed. The report would not include payments made to Members by way of indemnity and other allowances, expenses, or salaries in their capacities as officers of the Assembly or as Cabinet Ministers. Those payments are a matter of public record in other reports to the Assembly. Thus the report under the draft section would identify the aggregate payments to each Member and the persons directly associated with the Member in the fiscal year covered by the report. If the Provincial Treasurer classifies various kinds of payments in the report, the report would also show in each case the aggregate amount of payments in each class. The information made public in that way would indicate that the Member or other persons associated with him were in receipt of public money.

(f) Application to the Court for advice and directions

Section 37 of the Draft Bill has no equivalent in the present Act or in the legislation of any other jurisdiction in Canada. It allows a Member to seek the advice of the Court where he is in doubt as to whether an existing or proposed contract or payment may render him liable to disqualification. The decision must be filed with the Clerk of the Assembly and becomes, of course, a public document. The Clerk would keep a registry of such decisions. Since the application to the Court is made ex parte (with only the applicant being present or represented) the Court's decision stands as advice only to the Member and would not operate as a bar to disqualification proceedings commenced in Court or in the Assembly and based on the same facts.

The Member would, of course, run the risk of an adverse decision in the case of an existing contract and in that situation, the section

allows the Court to give the Member some time in which to remove the cause of disqualification and to give directions to the Member as to how he should go about it. If the Member cannot or will not comply with the Court's directions within the time limited by the Court, the Court would be able to make a finding of disqualification which in turn would result in disqualification proceedings in the Assembly.

(8) Loss of Canadian citizenship

A candidate in a provincial election must be a Canadian citizen in order to be eligible as a candidate. It is possible for the candidate, after he is elected, to lose his citizenship but the present Act is silent on the subject. Section 11 of the present Act alludes indirectly to the Member's citizenship status but only at the time of nomination. Section 30 of the Draft Bill cures this omission and expressly states that loss of citizenship is a ground for disqualification.

(9) The determination of disqualification: the jurisdiction of the Assembly and of the Court

Under the disqualification provisions of the present Act, the jurisdiction of the Court is limited to the making of a declaration of disqualification under section 13(1) and the giving of judgment under section 15 in an action by an informer for a pecuniary penalty.

Section 13 of the present Act reads:

> 13(1) No disqualification under section 8 or 9 on any ground arising before the election shall be held by any court to affect or to have hitherto affected the seat of a member of the Legislative Assembly, or to disentitle or to have disentitled a person to sit or vote therein, until the disqualification has been duly declared and found by a court.

(2) Subsection (1) shall not be construed as affecting

(a) the cases mentioned in section 10(f.1), or

(b) the right of the Legislative Assembly to expel a member according to the practice of Parliament or otherwise.

While subsection 13(1) presents some difficulty of interpretation, it is at least clear that the Court's jurisdiction is confined to an adjudication of a ground of disqualification under section 8 or 9 "arising before the election" of the Member. This seems to indicate that the Court's jurisdiction might relate only to matters of the Member's eligibility as a candidate in the election. Indeed, in the original 1909 Act, the predecessor of section 13 said "until such disqualification has been duly declared and found by an election court". (The word "election" is no longer in the section.) While the 1909 Act appeared to at least have assumed that an "election court" had jurisdiction to make a declaration of disqualification, it did not in terms give to any other court jurisdiction to make a declaration of disqualification. Section 13 is still unclear some seventy-four years later.

Whatever else it means, section 13(1) does not itself give "any court" the power to make a declaration of disqualification under section 8 or 9 on a ground arising after an election.

Section 15 gives the Court the jurisdiction to give judgment for a penalty. While the Court must necessarily make a finding of disqualification as a pre-condition to giving judgment for the penalty, the judgment itself does not result in a disqualification that vacates the seat of the Member-defendant.

If the Court's jurisdiction is thus limited at present, is it left only to the Assembly itself to adjudicate the matter of disqualification? The answer is yes, assuming that the Assembly has an inherent power of disqualification or expulsion of its Members. One would like to think so but, as has been explained earlier in this Paper, there is a risk in relying on the assumption that the Assembly has particular privileges or powers when they are not expressly given by statute. (Section 13(2)(b) of the present Act appears to be predicated on that assumption.)

The Draft Bill attempts to clarify the jurisdiction of the Assembly and the Court respectively. It gives paramount jurisdiction to the Assembly, and in doing so, does not appreciably change the situation in the present Act which assumes a paramount jurisdiction in the Assembly even in the limited cases where the Court can make a declaration under section 13(1).

Under the Draft Bill, the "common informer" action for the pecuniary penalty would be abolished as an anachronism just as it has been for the most part in the United Kingdom. Section 40 of the Draft Bill gives an elector the right to commence an action in the Court for a finding of disqualification based on the grounds in the Act. The finding will not itself result in the disqualification of the Member (except where the ground is the loss of the Member's Canadian citizenship) but will be subject to review by the Assembly itself following a hearing before the Select Standing Committee on Privileges and Elections, Standing Orders and Printing. In keeping with ancient parliamentary custom, the Assembly should be the master of its own house in matters of the expulsion or discipline of its Members. Certainly, a finding of disqualification by the Court would carry such weight that it will normally result in the disqualification of the Member-defendant by the Assembly. The Draft Bill

recognizes, however, that the finding of disqualification based as it is on legal interpretation of the grounds stated in the Act, may provide a harsh result where the disqualification is founded on a legal technicality or where there are mitigating circumstances. It is of interest to note that the House of Commons of the United Kingdom is empowered under its present legislation to override the decision of the court where the "grounds of disqualification or alleged disqualification under this Act which subsisted or arose at the material time have been removed, and it is otherwise proper to do so": see section 6(2) of the House of Commons Disqualification Act 1975.

It should be emphasized here that the Court, and not the Assembly, would have sole jurisdiction to determine the validity of elections under the Election Act, whether based on a candidate's ineligibility or otherwise. Once a Member is duly elected, however, the Assembly will be the final arbiter of whether the Member should be expelled by reason of a finding of disqualification except in the case of loss of citizenship. The Court may make a finding of disqualification based on a statutory ground, and the Assembly would normally give effect to the finding. Even so, the Assembly could still consider following something similar to the modern British practice and decide in the Member's favour if he has since removed the grounds of his disqualification or if there are other mitigating circumstances.

Section 39 of the Draft Bill provides for the procedural mechanics of bringing the Court's decision to the floor of the Assembly. Section 40 of the Draft Bill creates a procedure whereby any Member may start disqualification proceedings in the Assembly by a motion which, after a hearing before the Select Standing Committee, can result in a declaration

by the Assembly of the disqualification of a Member and the resulting vacating of his seat. The grounds for the motion are not confined to those in sections 30 to 33 of the Draft Bill and this will give the Assembly the same privileges and powers that have been possessed for centuries by the House of Commons at Westminster to expel Members for cause.

(As indicated earlier in this Paper, the current legislation in British Columbia gives its legislative assembly sole jurisdiction in matters of disqualification, and excludes the courts completely from adjudicating disqualification. Manitoba's Act has a similar provision but it is not as extensive. In any case, the Draft Bill does not follow either.)

Section 40 does not restrict the grounds on which a disqualification motion may be based. It may be that the allegations may be only partly proven or, if proven, do not justify disqualification but nevertheless justify some lesser punishment. Section 41 allows the Assembly the alternative of censuring the Member in these circumstances and the Member so censured may be punished in the same way as if the motion of censure had been passed under section 13 of the Draft Bill, that is, suspension or a fine or both.

If a proceeding before the Court alleges that the Member has ceased to be a Canadian citizen, the judgment of the Court will be final and not reviewable by the Assembly. This exception to the general rule is based on the fact that the loss of Canadian citizenship is a matter that the Assembly cannot excuse once judged as proven. There can be no mitigating circumstances that will allow a person to continue to remain as a Member of the Assembly once he has lost his Canadian citizenship, especially as that

citizenship was a fundamental requirement of his eligibility for election as a Member.

Section 41(3) of the Draft Bill sets out the effect of a declaration of disqualification by the Assembly or a finding of disqualification by the Court based on loss of citizenship. In each case the Member's seat is vacated. A by-election then becomes necessary to fill the vacancy unless, of course, dissolutiuon of the Assembly intervenes.

Division 3

Ineligibility of Election Candidates

As indicated earlier, the Draft Bill separates the subject of ineligibility of election candidates from the subject of disqualification of duly elected Members. The latter subject is dealt with entirely in Division 2 of Part 2 of the Draft Bill which has been discussed above. Part 6 of the Bill contains extensive amendments to the Election Act which will be discussed here.

(1) Separation of eligibility rules from disqualification rules

Section 52 of the Election Acts reads:

> 52 A person is eligible to be a candidate at an election if he is an elector and is not disqualified under the Legislative Assembly Act or any other Act.

Section 11 of the Legislative Assembly Act reads:

> 11 No person is eligible to be nominated as a candidate or to be a member of the Legislative Assembly or to act or vote in the Legislative Assembly unless at the time of his nomination he would have been entitled to be placed on a list of electors of an electoral division of Alberta if one were then being compiled.

There is no equivalent to section 11 in the proposed Legislative Assembly Act, 1983 because the objective of the Draft Bill is that all election eligibility requirements should be placed in the Election Act. In any event, the two sections are inconsistent with one another. Section 52 requires that the candidate be an "elector" which by definition ties the six-month residence requirement to polling day, but section 11 ties the six-month residence requirement to one or two other days in section 23 of the Election Act, that is, October 1 of a year in which a general enumeration is held, or, a date fixed by the Chief Electoral Officer in the case of a special enumeration. The revised version of section 52 in the Draft Bill seeks to remove the inconsistencies and anomalies by spelling out the eligibility requirements in specific terms that stand on their own. The existing requirements as to Canadian citizenship, age and residence are in the redrafted section 52 as well as three others which have been law for some years, namely, ineligibility by reason of the candidate being a member of the House of Commons or Senate of Canada, ineligibility by reason of the candidate having been found guilty of a corrupt election practice in the previous eight-year period, and ineligibility by reason of failure to file the candidate's financial statement for a previous election.

(2) The voiding of a candidate's election

The Election Act indicates that in two serious kinds of situations, the Court may void the election of the candidate who polled the most votes in a constituency rather than voiding the election in that constituency in its entirety. When a Court makes a finding of guilt in a prosecution for a corrupt election practice, sections 173(1) and 174(1) of the Election Act appear to give the Court jurisdiction to void only the candidate's election, and not the whole election. Under Part 7 of the Act

(Controverted Elections) it is possible for the petitioner to the Court to have a runner-up declared elected instead of the candidate who polled the most votes. In an extreme case, this could result in the election of a candidate who would have otherwise forfeited his deposit.

Where the Court finds that a corrupt election practice has been committed or where the Court accepts the allegations of a petitioner who seeks to controvert an election, the democratic electoral process has been distorted and the election result should not be allowed to stand. A by-election should be required in each case. The Draft Bill amends the relevant provisions in Part 6 (Corrupt Practices) and Part 7 (Controverted Elections) to achieve this objective.

(3) Removal of time limitation on a petition for court voidance of an election based on the winner's ineligibility

Section 179 of the Election Act requires that a petition to the Court to controvert an election must be filed within 30 days after the name of the successful candidate has been published in The Alberta Gazette. The filing of a petition under section 179 is the only procedure available to have an election voided on the ground that the successful candidate was ineligible at the time of his nomination. Thus, the thirty-day limit in section 179 operates to bar any petition grounded on ineligibility after the thirty-day period expires.

It is proposed that this anomaly should be removed. If the candidate was ineligible from the beginning, there should be no time limitation on a petition of that kind. The revised version of section 179 in Part 6 of the Draft Bill will achieve this objective.

PART 3

REMUNERATION OF MEMBERS

Part 3 of the Draft Bill is largely a reorganization and editorial revision of the provisions of the present Legislative Assembly Act dealing with allowances, salaries, expenses and other benefits payable to Members of the Assembly in their capacities as Members and as officers of the Assembly, namely, the Speaker, Deputy Speaker, Deputy Chairman, Leader of the Opposition and a leader of a "recognized opposition party". The rates of the allowances and salaries are not changed from the present Act.

There are, however, some areas in which the Draft Bill shows some significant change. One deals with the remuneration payable to Members by reason of their service on various committees, boards, commissions and agencies. Section 47 of the Draft Bill is derived from portions of the present section 12. The text is not changed appreciably but the section as drafted provides that a Member is entitled to reasonable travelling and living expenses incurred in the course of his service, unless the Lieutenant Governor in Council orders otherwise. At present, the Lieutenant Governor in Council must pass an O.C. authorizing the Member to accept expenses. The general rule should allow for the fact it is not normally reasonable to expect a Member to bear the burden of his expenses incurred on official business, unless the rates of fees have been set at a level that takes expenses into account. In the latter event, the Lieutenant Governor in Council would prohibit the acceptance of expenses. In any event, the revised section will reduce the number of orders in council presently required under section 12.

Section 47 of the Draft Bill deals with service on committees, boards and agencies to which Members are appointed by the Lieutenant Governor in Council or a Minister of the Crown. Section 46 of the Draft Bill deals with committees appointed by the Assembly and is based on the present section 62(1). The present section 62(2) also deals with committees appointed by the Lieutenant Governor in Council and overlaps section 12 to the extent that section 12 deals with committees appointed by the Lieutenant Governor in Council. The Draft Bill eliminates this overlapping and accordingly all appointments to committees established by order in council are dealt with in section 47 while section 46 is confined to appointments to committees established by the Legislative Assembly.

Section 43 of the Draft Bill deals with deductions from Members' allowances by reason of absence from sittings of the Assembly and while it is not appreciably different from section 56 of the present Act, it is tied to section 44 of the Draft Bill which provides for the filing of periodic declarations with the Clerk of the Assembly of declarations respecting days of absence.

Section 50 of the Draft Bill relates to the provision to Members of financial assistance to run constituency offices. It is in the same terms as the present section 54 except that the annual maximum allowance will be determined each year by the Speaker on the recommendation of the Members' Services Committee having regard to the amounts budgeted for the purpose, rather than having the statutory maximum being subject to adjustment each year under the present section 54(3).

PART 4

THE EXECUTIVE COUNCIL

This Part contains the provisions in the present Act affecting members of the Executive Council, namely, sections 36, 57 and 59. There are no changes in rates of salaries or allowances.

PART 5

GENERAL

This Part contains some miscellaneous provisions in the present Act that do not conveniently fit within any of the other Parts.

Section 58 is a revised version of the present sections 64 to 68 which, prior to the 1980 Statute Revision, constituted the Statutes Act.

Sections 59 to 61 of the Draft Bill are the same as the present sections 48 to 50.

PART 6

CONSEQUENTIAL AMENDMENTS, REPEAL AND COMMENCEMENT

Section 62 sets out the amendments to the Election Act which have been discussed earlier in this Paper.

The amendments to the M.L.A. Pension Act in section 63 of the Draft Bill are largely editorial or consequential to the new Act. The substantive changes involve the extension of the Act to the Deputy Chairman of Committees.

The amendments to the various Acts in section 64 of the Draft Bill are either editorial in nature or else made as a consequence of the proposed Legislative Assembly Act, 1983.

The Draft Bill would repeal and replace the present Legislative Assembly Act, RSA 1980, chapter L-10, and would come into force on a date to be fixed by Proclamation.

The Schedule contains the list of offices that are disqualifying offices for the purposes of section 31 of the Draft Bill.

APPENDIX

WHITE PAPER
respecting the
re-enactment of the
Legislative Assembly Act

DRAFT BILL

for the

LEGISLATIVE ASSEMBLY ACT, 1983

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Commencement 66

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

(a) "Clerk" means the Clerk of the Legislative Assembly;

(b) "Court" means the Court of Queen's Bench;

(c) "Deputy Chairman" means the Deputy Chairman of Committees;

(d) "Deputy Speaker" means the Deputy Speaker and Chairman of Committees;

(e) "officer of the Assembly" means an officer referred to in section 21(1)(a);

(f) "Member " means a Member of the Legislative Assembly;

(g) "Members' Services Committee" means the Special Select Standing Committee of the Assembly on Members' Services.

(2) For the purposes of this Act and any other enactment, the following rules apply to determine when a person becomes a member of the Legislative Assembly:

(a) if the person is declared elected by acclamation under section 58 of the *Election Act*, he becomes a member of the Assembly on the making of the declaration;

(b) if the person is declared elected under section 137 of the *Election Act* and no application is made to the Court within the 8-day period prescribed by section 142 of that Act, he becomes a member of the Assembly at the expiration of that period;

(c) if the person is declared elected under section 145(1) of the *Election Act* and no appeal is taken to the Court of Appeal within the 2-day period prescribed by section 146(1) of that Act, he becomes a member of the Assembly at the expiration of that period;

(d) if the person is declared elected pursuant to section 146(7) of the *Election Act*, he becomes a member of the Assembly on the making of the declaration.

(3) In an enactment other than this Act, unless otherwise provided in the enactment, "member of the Legislative Assembly" means a person who has become a Member of the Legislative Assembly and has not since ceased to hold office as a Member of the Legislative Assembly.

(4) For the purposes of this Act, a Member is "sworn in" when he takes the oath of allegiance under section 24.

NOTE: 1 New.

PART 1

THE LEGISLATIVE ASSEMBLY

Division 1

Composition, Sittings and Procedure

Composition of Assembly

2 The Legislative Assembly shall consist of the persons elected pursuant to the *Election Act* as members of the Legislative Assembly to represent respectively the electoral divisions described in the Schedule to the *Electoral Divisions Act*.

NOTE: 2 Compare section 1 of the present Act. The Electoral Divisions Act would be the subject of a separate Bill to be passed at the same time as this Bill.

Duration of Assembly

3(1) No Legislative Assembly shall continue for longer than 5 years from the date fixed for the return of the writs at a general election of its members.

(2) In time of real or apprehended war, invasion or insurrection, a Legislative Assembly may be continued by the Legislature beyond 5 years if such continuation is not opposed by the votes of more than one-third of the Members of the Legislative Assembly.

NOTE: 3 Compare section 3 of the present Act and section 4 of the Canadian Charter of Rights and Freedoms.

Sittings

4 There shall be a sitting of the Legislature at least once every 12 months.

NOTE: 4 Compare the present section 4 and section 5 of the Canadian Charter of Rights and Freedoms.

Prorogation

5 It is not necessary for the Lieutenant Governor in proroguing the Legislature to name any day to which it is prorogued.

NOTE: 5 See section 5 of the present Act.

Effect of vacancy

6 No omission or failure to elect a person as a Member of the Legislative Assembly for an electoral division nor any vacancy in the Legislative Assembly makes the Assembly incomplete or invalidates any of its proceedings.

NOTE: 6 New.

Voting in Assembly

7(1) Questions arising in proceedings of the Legislative Assembly shall be decided by a majority of votes cast and, subject to subsection (2), the Speaker or other person presiding at those proceedings pursuant to section 18 or 19 shall not vote on the question.

(2) When the number of votes cast for and against a motion are equal, the Speaker or other person presiding at the proceedings has and shall exercise the casting vote.

NOTE: 7 See section 34 of the present Act.

Quorum

8 The presence of at least 20 members is necessary to constitute a meeting of the Assembly for the exercise of its powers, and in counting the number present the Speaker, if present, shall be included.

NOTE: 8 See section 35 of the present Act.

Money votes

9 The Legislative Assembly shall not adopt or pass a vote, resolution, address or bill for the appropriation

(a) of any part of the General Revenue Fund, or

(b) of any other tax or impost,

unless the vote, resolution, address or bill has been first recommended by a message of the Lieutenant Governor to the Legislative Assembly during the session in which the vote, resolution, address or bill is proposed.

NOTE: 9 Compare section 51 of the present Act.

Division 2
Assembly's Privileges, Immunities and Powers

Privileges, immunities and powers generally

10(1) In addition to the privileges, immunities and powers respectively conferred on them by this Act, the Legislative Assembly and its Members, and the committees of the Assembly and their members, have the same privileges, immunities and powers as those held respectively by the House of Commons of Canada, the members of that House, the committees of that House and the members of committees of that House.

(2) The privileges, immunities and powers referred to in subsection (1)

(a) are part of the public and general law of Alberta,

(b) need not be pleaded, and

(c) shall be judicially noticed in all courts in Alberta.

NOTE: 10 New.

Assembly as a court

11(1) The Legislative Assembly is a court and has the rights, privileges and powers of a court for the purpose of summarily inquiring

into, judging and punishing, as breaches of privilege or as contempts, the commission of any of the following acts:

(a) an assault, insult or libel on a Member while the Legislative Assembly is in session or during the 20-day periods before and after each session;

(b) obstructing, threatening or attempting to force or intimidate a Member in any matter relating to his office;

(c) the offering to, or acceptance by, a Member of

(i) a bribe to influence him in his conduct as a Member, or

(ii) a fee or reward in respect of drafting, advising upon, revising, promoting or opposing any bill, resolution, petition or other matter submitted to or intended to be submitted to the Legislative Assembly or a committee of the Assembly;

(d) an assault on or interference with the Speaker, Deputy Speaker or Deputy Chairman or other Member appointed by the Assembly to an office of the Assembly, or with an officer or employee of the Legislative Assembly Office in the execution of his duties;

(e) tampering with a witness with regard to evidence given or to be given by him before the Legislative Assembly or a committee of the Assembly;

(f) giving false evidence or prevaricating or misbehaving in giving evidence or refusing to give evidence or to produce papers before the Assembly or a committee of the Assembly;

(g) disobedience to a warrant requiring the attendance of a witness before the Assembly or a committee of the Assembly, or refusal or neglect to obey a warrant issued pursuant to section 16(2);

(h) forging, falsifying or wrongfully altering

(i) a record of, or

(ii) a document presented to or filed with or intended to be presented to or filed with,

the Legislative Assembly or a committee of the Assembly;

(i) the setting or subscribing by any person of the name of another person to any document presented or to be presented to the Legislative Assembly or a committee of the Assembly, with intent to deceive;

(j) presenting to the Legislative Assembly or a committee of the Assembly of a document referred to in clause (h) or (i) with intent to deceive;

(k) taking any civil proceeding against, or causing or effecting the arrest or imprisonment of a Member in any civil proceeding, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or anything said by him, before the Assembly or a committee of the Assembly;

(l) causing or effecting the arrest, detention or molestation of a member of the Assembly for any cause of a civil nature during a session of the Legislature or during the 20 days preceding or the 20 days following a session;

(m) a contravention of an order of the Assembly.

(2) For the purposes of this Act, the Assembly has all the powers and jurisdiction necessary or expedient for inquiring into, judging and punishing the commission of the acts enumerated in subsection (1) and for carrying into execution the punishment determined by the Assembly.

(3) A determination by the Assembly under subsection (1) does not affect the liability of the offender to prosecution and punishment according to law and independently of this Act.

NOTE: 11 Compare section 44 of the present Act.

Order of punishment

12(1) Every person who is found by the Legislative Assembly to have committed any act enumerated in section 11, in addition to any other penalty or punishment to which he may be subject by law, is liable to either or both of the following:

(a) imprisonment for such period of time during the session of the Assembly then being held that the Assembly by order determines;

(b) a penalty in an amount determined by order of the Assembly.

(2) If the Legislative Assembly makes an order under subsection (1)(a), the Speaker shall issue his warrant to the Sergeant-at-Arms, a peace officer or the director of a correctional institution as defined in the *Corrections Act* to cause the person against whom the order is made to be taken into and kept in custody in accordance with the order.

NOTE: 12 Compare sections 45 and 47 of the present Act. Subsection (1)(b) is new.

Censure of Member by the Assembly

13(1) Notwithstanding anything in this Division, the Legislative Assembly may censure a Member for any cause that is sufficient in the opinion of the Assembly.

(2) A motion in the Assembly for the censure of a Member

(a) shall set out the particulars of the allegations, and

(b) shall, on being moved, stand referred to the Select Standing Committee on Privileges and Elections, Standing Orders and Printing.

(3) The Select Standing Committee shall

(a) hear and determine the allegations in the motion,

(b) has all the privileges, immunities and powers of the Assembly acting as a court under this Division for the purpose of the hearing and determination, and

(c) shall, after hearing and determining the allegations, report to the Assembly, with its recommendation as to whether the Member should censured or not and, if it recommends censure, its recommendations as to punishment.

(4) After the tabling of the Committee's report under subsection (3), the Assembly may censure the Member.

(5) If a Member is censured under subsection (4), the Assembly may also by order

(a) suspend the right of the Member to sit and vote in the Assembly and in committees of the Assembly for a stated period or until the fulfilment of a condition in the order;

(b) suspend the Member from membership of the Assembly for a stated period or until the fulfilment of a condition in the order;

(c) in addition to or in place of suspension under clause (a) or (b), impose a pecuniary penalty on the Member in an amount that the Assembly considers appropriate in the circumstances.

NOTE: 13 New.

Determination final

14 The determination of the Legislative Assembly acting as a court in a proceeding under this Act is final.

NOTE: 14 See section 45 of the present Act.

Members' immunities

15(1) No Member is liable to any civil action or to prosecution, arrest, imprisonment or damages by reason of any matter or thing brought by him before the Legislative Assembly or any committee of the Assembly by petition, bill, resolution, motion or otherwise or by reason of anything said by him in the Legislative Assembly or any committee of the Assembly.

(2) During a session of the Legislature and the 20-day periods before and after it, no Member is liable, except for a contravention of this Act, to arrest or detain for any cause that is civil in nature and within the legislative jurisdiction of the Legislature.

NOTE: 15 See sections 41 and 42 of the present Act.

Compelling attendance of witnesses

16(1) The Legislative Assembly may by order summon before the Assembly or any committee of the Assembly any person as a witness and to require him to give evidence on oath orally or in writing and to produce any documents and things the Assembly or committee considers necessary in any of its proceedings or deliberations.

(2) If the Legislative Assembly requires the attendance of a person as a witness by an order under subsection (1), the Speaker may issue a warrant directing the person to attend and produce any documents and things mentioned in the order.

(3) An order or warrant issued by or under the authority of the Legislative Assembly under this Act may command the aid and assistance of a sheriff or peace officer.

(4) A person who fails or refuses to give aid or assistance when it is commanded under subsection (3) is guilty of contempt of the Assembly.

NOTE: 16 Compare sections 37, 38, 39 and 40(2) of the present Act.

Non-liability for acts done under authority of Assembly

17 No person is liable in damages or otherwise for any act done

(a) under the authority of the Legislative Assembly and within its legal power, or

(b) under an order or warrant issued under that authority.

NOTE: 17 See section 40 of the present Act.

Division 3

Assembly Officers and Staff

The Speaker

18(1) The Legislative Assembly on first convening after a general election shall, as soon as possible, elect one of its Members as Speaker of the Legislative Assembly.

(2) If a vacancy occurs in the office of Speaker by death, resignation or otherwise, the Legislative Assembly shall, as soon as possible, elect another of its Members as Speaker.

(3) Except as otherwise provided in this Act the Speaker shall preside at all sittings of the Legislative Assembly.

(4) The person who is Speaker at the time of the dissolution of the Legislature continues to hold office as the Speaker until the expiration of the day preceding the day fixed by Proclamation for the next sitting of the Legislature to begin.

NOTE: 18 See sections 28 and 32 of the present Act.

Deputy Speaker and Deputy Chairman

19(1) The Legislative Assembly shall elect one of its Members as Deputy Speaker and Chairman of Committees and another of its Members as Deputy Chairman of Committees.

(2) If the Speaker is absent from the Assembly chamber during a sitting, the Deputy Speaker shall preside at all proceedings of the Legislative Assembly until the Speaker returns.

(3) If both the Speaker and the Deputy Speaker are absent from the Assembly chamber, the Deputy Chairman shall preside at the proceedings of the Legislative Assembly until the Speaker or Deputy Speaker returns.

(4) If the Speaker, the Deputy Speaker and the Deputy Chairman are all absent from the Assembly chamber during a sitting day, the Legislative Assembly may elect one of its Members to preside at its proceedings on that day until the Speaker, Deputy Speaker or Deputy Chairman returns.

(5) A person presiding at the proceedings of the Assembly pursuant to subsection (2), (3) or (4) of this section has all the powers and duties of the Speaker in relation to all matters arising in the Assembly while that person is so presiding, and everything done by the Assembly while that person is so presiding is as valid as if he were then the Speaker.

NOTE: 19 See sections 29, 30 and 31 of the present Act.

Acting Speaker

20 Subject to sections 19,

(a) the Deputy Speaker is the Acting Speaker for all purposes in the event of the absence of the Speaker or a vacancy in the office of the Speaker, and

(b) the Deputy Chairman is the Acting Speaker for all purposes in that event that

(i) the Speaker is absent or there is a vacancy in the office of the Speaker, and

(ii) the Deputy Speaker is absent or there is a vacancy in the office of Deputy Speaker.

NOTE: 20 New.

Legislative Assembly Office

21(1) There shall be a department of the public service of Alberta called the Legislative Assembly Office which shall be presided over by the Speaker and shall consist of

(a) the Clerk and the other officers of the Assembly who are not Members, and

(b) those persons employed pursuant to the *Public Service Act* to assist in the conduct of the business and affairs of the Legislative Assembly.

(2) On the recommendation of the Speaker, the Select Standing Committee on Legislative Offices may, by resolution, direct that

(a) any regulation, order or directive made under the *Financial Administration Act*, or

(b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

be inapplicable to, or be varied in its operation in respect of, the Legislative Assembly office or any particular appointed officer or employee or class of employees of the Legislative Assembly Office.

(3) A direction made under subsection (1)(a) in relation to a regulation, order or directive made under the *Financial Administration Act* operates notwithstanding that Act.

NOTE: 21 New.

Financing of operations

22(1) The Speaker shall submit annually to the Select Standing Committee on Legislative Offices an estimate of the sum that will be required to be provided by the Legislature for the payment of the salaries, allowances and expenses of the Legislative Assembly Office during the next ensuing fiscal year.

(2) The Select Standing Committee on Legislative Offices shall review each estimate submitted pursuant to subsection (1) and, on completion of the review, the chairman of the Committee shall submit the estimate to the Treasurer for inclusion in the estimates.

(3) If at any time the Legislative Assembly is not in session the Select Standing Committee on Legislative Offices, or if there is no Select Standing Committee, the Provincial Treasurer,

(a) reports that the Auditor General has certified that in the public interest, an expenditure of public money is urgently required in respect to any matter pertaining to his office, and

(b) reports that either

(i) there is no supply vote under which an expenditure with respect to that matter may be made, or

(ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by himself authorizing the expenditure of the amount estimated to be required.

(4) When the Legislative Assembly is adjourned for a period of more than 14 days then, for the purposes of subsection (3), the Assembly shall be deemed not to be in session during the period of the adjournment.

(5) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act* for the fiscal year in which the special warrant is signed.

(6) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

(7) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

NOTE: 22 New.

Powers of Assembly in relation to its officers

23 Notwithstanding the *Public Service Act*, the Legislative Assembly by resolution or order

(a) require that the appointment of any officer of the Legislative Assembly is to be made by the Assembly or a committee of the Assembly instead of being made under the *Public Service Act*,

(b) confer or impose any power or duty on an appointed officer of the Assembly, or

(c) dismiss, or suspend the appointment of, any officer or employee of the Legislative Assembly Office.

NOTE: 23 New.

PART 2

MEMBERSHIP OF THE ASSEMBLY

Oath of Allegiance

24(1) Before being permitted to take his place in and to vote in the Legislative Assembly, a Member shall take an oath of allegiance in the following form:

"I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her heirs and successors according to law. So help me God."

(2) The Member, instead of taking an oath, may make a solemn declaration and affirmation in the form of the oath prescribed in subsection (1), substituting the words "solemnly and truly declare and affirm" for the word "swear", and omitting the words "So help me God."

NOTE: 24 New.

Division 1

Vacancies in Membership

Disclaimer

25(1) A Member may disclaim his seat by sending by registered mail or delivering to the Clerk a disclaimer signed by the Member in the following form:

"I, A.B., Member of the Legislative Assembly of Alberta for the electoral division of . . . . . ., disclaim all my

right to sit or vote as a member of the Legislative Assembly of Alberta or in any manner to act as a member of that Assembly."

(2) The receipt by the Clerk of a disclaimer under subsection (1) operates to vacate the seat of the member-elect concerned.

(3) The Clerk shall, on receiving a disclaimer, send a copy of it to the clerk of the Court of Queen's Bench for every judicial district in which is situated the whole or any part of the electoral division for which the disclaiming member-elect was declared elected.

(4) A clerk of the Court of Queen's Bench who receives a copy of disclaimer under subsection (1) shall give notice of the disclaimer to any person who has filed, or who thereafter presents for filing, a petition against .he disclaiming member-elect under Part 7 of the *Election Act*.

(5) A disclaimer Joes not affect the liability of the disclaiming member-elect to prosecution for an offence under Part 5 or 6 of the *Election Act*.

NOTE: 25 See sections 16 to 19 of the present Act.

Resignation

26(1) A Member who has been sworn in may resign his seat

(a) by declaring openly in his place in the Legislative Assembly during its proceedings that he resigns his seat as a Member, or

(b) by delivering a resignation signed by him and attested by two witnesses to

(i) to the Speaker, or

(ii) if the Member is then the Speaker or Acting Speaker, to any 2 Members.

(2) If a resignation is delivered pursuant to subsection (2), the Speaker or Acting Speaker or the 2 Members, as the case may be, shall immediately deliver the resignation to the Clerk.

(3) If a Member resigns his seat in accordance with subsection (1), the seat immediately becomes vacant.

(4) The resignation of a Member does not affect his liability to prosecution for an offence under Part 5 or 6 of the *Election Act*.

NOTE: 26 See sections 16, 17, 18 and 19 of the present Act.

Order for election to fill vacancy

27(1) When a vacancy occurs in the membership of the Assembly by reason of a disclaimer, resignation, death or otherwise, the Clerk shall

(a) issue and deliver his warrant to the Chief Electoral Officer for the issue of a writ for the election of a Member to fill the vacancy, and

(b) deliver a copy of the warrant to the Clerk of the Executive Council.

(2) Within 6 months after the delivery of the warrant to the Chief Electoral Officer, an order shall be made under section 36 of the *Election Act* authorizing the issue of a writ for an election to fill the vacancy.

(3) This section does not apply where the vacancy occurs during the last year of the legal life of the Assembly.

(4) If the Legislature is dissolved after the issue of the writ referred to in subsection (2) and before an election is held under the writ, the writ is revoked on the dissolution of the Legislature.

NOTE: 27 See sections 24 and 25 of the present Act.

Division 2

Disqualification

Interpretation

28(1) In this Division,

(a) "Crown" means the Crown in right of Alberta and includes a Provincial agency;

(b) "Provincial agency" means a Provincial agency as defined in the *Financial Administration Act* but does not include a corporation enumerated in section 2(5) of that Act;

(c) "publicly-traded shares" means

(i) shares of a corporation that are listed or posted for trading on a recognized stock exchange in Canada or the United States of America, or

(ii) shares of a corporation that has more than 15 shareholders and any of those issued shares, or securities which may or might be

exchanged for or converted into shares, were part of a distribution to the public;

(d) "senior officer" means, with reference to a corporation,

(i) the president, vice-president, secretary, comptroller, treasurer or general manager of the corporation, or

(ii) any other person who performs functions for the corporation similar to those normally performed by persons holding the offices referred to in subclause (i).

(2) For the purposes of this Division, shares of a corporation

(a) issued on a conversion of other securities, or

(b) issued in exchange for other securities

are deemed to be shares that are part of a distribution to the public if those other securities were part of a distribution to the public.

(3) Subject to subsection (4), for the purposes of this Division, shares of a corporation

(a) are part of a distribution to the public if, in respect of the shares, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or territory of Canada or a jurisdiction outside Canada, or

(b) are deemed to be part of a distribution to the public if the shares have been issued and a filing referred to in clause (a) would be required if the shares were being issued currently.

(4) On the application of a Member who is a beneficial owner of shares of a corporation, the Court may determine that the shares of the corporation are not or were not part of a distribution to the public for the purposes only of this Division.

NOTE: 28 Sections 28 to 41 are new. Compare ss 6 to 15 of the present Act.

Persons directly associated with a member

29(1) For the purposes of this Division, a person is directly associated with a Member if

(a) that person is the Member's spouse except where the Member and the spouse are living apart and are separated pursuant to a judicial separation or written separation agreement;

(b) that person is a corporation having share capital and carrying on business or activities for profit or gain and the Member is a director or senior officer of the corporation;

(c) that person is a corporation carrying on business or activities for profit or gain and the Member is the beneficial owner of shares of the corporation other than

(i) publicly-traded shares, or

(ii) shares held in a blind trust;

(d) that person is a partnership

(i) of which the Member is a partner, or

(ii) of which one of the partners is a corporation directly associated with the Member by reason of clause (b) or (c);

(e) that person is a person or group of persons acting as the agent to the Member with actual authority from the Member.

(2) For the purpose of this Division, a trust is a "blind trust" if it meets the following criteria:

(a) the Member is the settlor of the trust;

(b) the trustee is not

(i) the Member,

(ii) a person directly associated with the Member, or

(iii) a corporation of which the Member is an employee,

(c) the terms of the trust

(i) authorize or direct the trustee to deal with the trust property without first informing the Member or otherwise communicating with the Member in respect of the trustee's transactions respecting the trust property, and

(ii) prohibit the Member from having any control over or involvement with the administration of the trust property;

(d) the terms of the trust require that the trustee shall not identify to the Member

(i) any of the assets included in the trust property, or

(ii) the sources of income of the trust property other than by describing the general nature of the classes of income;

(e) the terms of the trust, if they permit the Member to appoint another person as his agent to examine or audit the records of the trustee and to sue on his behalf for a breach of trust or for any accounting, prohibit that agent from disclosing any information to the Member that the trustee himself is prohibited from disclosing to the Member in relation to the trust property.

Loss of citizenship

30 A Member may be declared to be disqualified from membership of the Legislative Assembly if he ceases to be a Canadian citizen.

Disqualifying offices

31(1) Subject to this Act, a person may be declared to be disqualified from membership of the Legislative Assembly if that person

(a) is at the time he becomes a Member, or becomes at any time while he is a Member, a member of the Senate or House of Commons of Canada,

(b) is at the time he is sworn in as a Member, or becomes at any time after he is sworn in as a Member,

(i) an employee of the Crown in right of Canada, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(ii) the holder of an office to which he is appointed by or at the nomination of the Governor in Council or a Minister of the Crown in right of Canada, and to which a salary is attached,

or

(c) becomes at any time while he is a Member,

(i) an employee of the Crown, whether the employment is permanent or temporary or on a full-time or part-time basis, or

(ii) the holder of any of the offices described in the Schedule to this Act.

(2) Except as provided in subsection (1),

(a) a person is not disqualified from membership of the Legislative Assembly by reason of his holding an office or place of employment from the Crown or any other office or place of employment, and

(b) a person is not ineligible for appointment to or for holding any office or place by reason of his being a Member of the Legislative Assembly.

(3) If a person is, immediately before becoming a Member,

(a) an employee of the Crown, whether his employment is permanent or temporary or on a full-time or part-time basis, or

(b) the holder of any of the offices described in the Schedule to this Act,

that person, on becoming a Member, ceases to be an employee of the Crown or the holder of the office, as the case may be, notwithstanding any other Act or law in force in Alberta.

(4) Nothing in this section operates to make a Member liable to disqualification by reason of being appointed to an office described in the Schedule to this Act in his capacity as a Minister of the Crown if he receives no remuneration as the holder of that office other than reasonable travelling and living expenses incurred in the course of serving in that office.

(5) If a place of employment from the Crown is held pursuant to a contract of employment, the employment shall be governed by this section and not by section 32.

Disqualifying contracts

32(1) A Member may be declared to be disqualified from membership of the Legislative Assembly if, while he is a Member, he or a person directly associated with him becomes a party to a contract within any of the following classes:

(a) a contract under which the Member or the person directly associated with him borrows money from a treasury branch;

(b) a contract under which the Member or a person directly associated with him conveys or agrees to convey to the Crown any interest in land otherwise than

(i) by consenting to the acquisition by the Crown of the interest under section 30 of the *Expropriation Act* and executing a conveyance under that section, or

(ii) with the approval of the Court under an order certifying that the consideration for the conveyance is fair and reasonable;

(c) a contract to which the Crown is also a party and which is for the construction, demolition, alteration or repair of a public work;

(d) a contract under which the Alberta Agricultural Development Corporation lends money to, or guarantees a debt of, the Member or a person directly associated with him;

(e) a contract under which the Alberta Opportunity Company lends money to, or guarantees a debt of, the Member or a person directly associated with him;

(f) a contract to which the Crown is also a party, other than a contract referred to in clauses (a) to (e), if the Member or the person directly associated with the Member received a preference from the Crown in entering into the contract or received a benefit under the contract not available to other members of the public under contracts of the same class.

(2) Notwithstanding subsection (1), a Member may not be declared disqualified from membership of the Assembly in respect of a contract to which that subsection would otherwise apply if

(a) at the time he became a Member, the Member or the person directly associated with him was a party to the contract,

(b) the contract is to be renewed according to its provisions or is to be renegotiated,

(c) the Court, before the renewal is made or the replacement contract is executed by the Member or the person directly associated with him, makes an order certifying its opinion that

(i) the provisions of the renewal or the replacement contract are fair and reasonable in the circumstances, having regard to the provisions of the existing or previous contract,

(ii) in the case of a renewal, the renewal will be effected in accordance with the provisions of the contract pertaining to its renewal, and

(iii) the Member or the person directly associated with the Member has not received any preference from the Crown in relation to the renewal or in negotiating the replacement contract and will not receive a benefit under the renewal or replacement contract not available to other members of the public under contracts of the same class.

Disqualifying payments

33(1) A Member may be declared to be disqualified from membership of the Assembly if, while he is a Member, he or a person directly associated with him accepts a payment of public money from the Crown as a person acting on behalf of the Crown otherwise than as permitted by subsection (2).

(2) Subject to this Act, a Member or a person directly associated with him may accept a payment of public money that is made by the Crown or a person acting on behalf of the Crown to the Member or to a person directly associated with the Member if

(a) the payment is made to the Member pursuant to Part 3 or 4 or otherwise to him in his capacity as a Member of the Legislative Assembly, as a member of the Executive Council or as the holder of an office to which he is elected by the Assembly or appointed by or at the nomination of the Lieutenant Governor in Council or a Minister of the Crown in right of Alberta, and the payment is authorized by or pursuant to

(i) this Act or any other enactment,

(ii) a resolution or order of the Assembly, or

(iii) a supply vote or Heritage Fund vote as defined in the *Financial Administration Act;*

(b) the recipient was, according to the enactment authorizing the payment, entitled to the payment as a matter of right or subject only to compliance with the requirements of that enactment that are conditions precedent to the payment, or

(c) the recipient of the payment

(i) was, according to the enactment under which the payment was authorized, eligible to apply for the payment and complied with the requirements of that enactment that were conditions precedent to the payment,

(ii) in respect of his application was given no preference not available to others, and

(iii) received no special benefit in relation to his application or the payment.

(3) This section does not apply to a payment under a contract to which section 32 applies.

When person deemed a Member under sections 32 and 33

34 If a person ceases to be a Member by reason of dissolution of the Assembly or otherwise and again becomes a Member by reason of being elected in the succeeding general election or by-election, as the case may be, then, for the purposes of sections 32 and 33, the person is deemed to be a Member during the intervening period.

Disclosure and annual reports

35(1) Every person who is a Member at the date of the commencement of this Act shall, not later than 90 days after that date, furnish to the Clerk a return showing

(a) the name and address of each person with whom he was directly associated on April 1, 1983 and of the persons with whom he became associated after that date and before the date of the return, and

(b) if the Member's direct association with any person referred to in clause (a) terminated before the date of the return, the date of the termination.

(2) Every person who becomes a Member after the commencement of this Act shall, within 90 days after the day on which he becomes a Member, furnish to the Clerk a return showing

(a) the name and address of each person with whom the Member was directly associated on the day he became a Member and with whom he became directly associated after that date and before the date of the return,

(b) if the Member's direct association with any person referred to in clause (a) terminated before the date of the return, the date of the termination.

(3) Every Member shall furnish to the Clerk

(a) a return showing

(i) the name and address of each person with whom the Member became directly associated on or after the date of his initial return under subsection (1) or (2), and

(ii) the date on which the direct association began,

within 30 days after the direct association began, and

(b) a return showing the date on which his direct association with any person terminated, within 30 days after that date.

(4) Where a person ceases to be a Member by reason of dissolution of the Legislature or otherwise,

(a) he shall, within 30 days after ceasing to be a Member, furnish a return to the Clerk showing

(i) the name and address of each person with whom he became directly associated or with whom he ceased to be directly associated on or after the date of his last return under this section, and

(ii) the date on which the direct association began or terminated, as the case may be,

and

(b) if he again becomes a Member in the succeeding general election or by-election, as the case may be, he shall, within 30 days after he again becomes a Member, furnish a return to the Clerk showing

(i) the name and address of each person with whom he became directly associated or with whom he ceased to be directly associated in the intervening period, and

(ii) the date on which the direct association began or terminated, as the case may be.

(5) The Provincial Treasurer shall, after the end of each Government fiscal year, prepare a report showing in respect of each person who was a Member during that fiscal year

(a) the names of the persons directly associated with the Member in that fiscal year and the period of the direct association, as indicated by the returns furnished by the Member pursuant to this section,

(b) information relating to payments made by the Crown to the Member by reason of a liability relating to that fiscal year or the part of the fiscal year during which he was a Member, and

(c) information relating to payments made to the respective persons directly associated with the Member by the Crown by reason of a liability relating to that fiscal year or the part of the fiscal year during which the direct association existed, as indicated by the returns furnished by the Member pursuant to this section.

(6) The Provincial Treasurer, in providing the information referred to in subsection (5)(b) and (c) in a report under that subsection

(a) may classify payments in any manner he considers appropriate,

(b) shall show in respect of each class of payments the aggregate amount of the payments of that class made to each Member and to each person directly associated with him, and

(c) shall show in respect of each person who was a Member in the fiscal year to which the report relates the aggregate amount of all payments of all classes made to that Member and the aggregate amount of all payments of all classes made to each person directly associated with the Member.

(7) A report prepared under subsection (5) shall not include payments made to the Member pursuant to Part 3 or 4 or payments required to be included in a report under section 47.

(8) When a report under subsection (5) is prepared, the Provincial Treasurer shall lay the report before the Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

When disqualification occurs

36 Subject to section 40,

(a) a Member is not disqualified from membership of the Assembly under section 30 until the Court, in an action under section 38, makes a finding that the Member is disqualified;

(b) a Member is not disqualified from membership of the Assembly under section 31, 32 or 33 until

(i) the Court makes a finding that the Member is disqualified in a judgment made under section 37(5) or 38, and

(ii) the Member has been declared disqualified by the Legislative Assembly in accordance with sections 39 and 41.

Application to Court for advice and directions

37(1) A Member may apply ex parte to the Court of Queen's Bench for the advice and direction of the Court

(a) as to whether or not an existing or proposed contract is one in respect of which he would be liable to be disqualified from membership of the Assembly under section 32, or

(b) as to whether or not a payment he or a person directly associated with him has received or is about to receive is one in respect of which he would be liable to be disqualified from membership of the Assembly under section 33.

(2) The Court shall state its advice in an order and a certified copy of the order together with the Court's reasons shall be delivered to the Clerk of the Assembly.

(3) If the advice of the Court is that an existing contract or a payment already received, as the case may be, is one in respect of which the Member would be liable to be declared disqualified from membership of the Assembly under section 32 or 33, the order of the Court may also

(a) in the case of an existing contract, give directions to the Member, with or without conditions, as to how the Member may remove the cause of disqualification and prescribing the time within which the Member must do so, or

(b) in the case of a payment, give directions to the Member, with or without conditions, as to the repayment of the money and prescribing the time within which the repayment must be made.

(4) The Court may from time to time, with or without conditions, extend a period of time prescribed pursuant to subsection (3)(a) or (b).

(5) If a Member does not file with the Court evidence satisfactory to the Court that he has complied with directions of the Court given pursuant to subsection (3) within the time prescribed by the order or any extension of that time given under subsection (4), the Court may make a judgment finding that the Member is disqualified under section 32 or 33, as the case may be, by reason of the contract or payment, and giving the reasons for the finding.

(6) When a judgment is entered pursuant to subsection (5), a certified copy of it shall be delivered to the Clerk of the Legislative Assembly.

(7) Where a judgment entered under subsection (5) is appealed, the Registrar of the Court of Appeal

(a) shall deliver a certified copy of the judgment and reasons of the Court of Appeal to the Clerk of the Assembly, or

(b) if the appeal is abandoned, shall give written notice of the abandonment to the Clerk of the Assembly.

(8) No proceeding under this section and no order under subsection (3)

(a) operates as a bar to any action under section 38 or to any proceedings in the Assembly under section 39 or 40, or

(b) is binding on the Court in an action under section 38 or on the Assembly in proceedings under section 39 or 40.

(9) The Clerk of the Assembly shall maintain a registry of the orders and judgments delivered to him under this section and section 38.

Action for finding of disqualification

38(1) An action for a finding that a Member is disqualified under section 30, 31, 32 or 33 may be commenced in the Court by any person who, if the date on which the action is commenced were the polling day for a general election under the *Election Act*, would be eligible to vote at that election.

(2) In an action under this section, the statement of claim shall

(a) be filed in a judicial district in which all or part of the Member's electoral division is located,

(b) show the Member concerned as the sole defendant,

(c) state the grounds of disqualification relied on by the plaintiff, and

(d) ask the Court to find that the Member is disqualified on the grounds so stated.

(3) An action under this section shall be conducted in the same manner, and is appealable in the same manner, as in the case of an action for a declaratory judgment.

(4) The judgment of the Court shall limit its findings to whether or not the Member is disqualified under section 30, 31, 32 or 33 on 1 or more of the grounds alleged in the statement of claim and the reasons for the findings, and on entry of the judgment, a certified copy of it shall be delivered to the Clerk of the Assembly.

(5) Where the judgment of the Court is appealed, the registrar of the Court of Appeal

(a) shall deliver a certified copy of the judgment and reasons of the Court of Appeal to the Clerk of the Assembly, or

(b) if the appeal is abandoned, shall give written notice of the abandonment to the Clerk of the Assembly.

(6) If an action is commenced under this section and is being prosecuted in good faith or has resulted in a judgment, no other action may be commenced under this section against the same Member on a ground of disqualification based on the same or substantially the same facts.

Assembly proceedings following Court finding

39(1) On receiving

(a) a copy of the judgment of the Court of Queen's Bench under section 37(5) or 38,

(b) a copy of the judgment of the Court of Appeal delivered pursuant to section 38(5), or

(c) a notice of the abandonment of an appeal delivered pursuant to section 37(7) or 38(5),

the Clerk of the Assembly shall lay the copy of the judgment or the notice, as the case may be, before the Assembly at the earliest opportunity.

(2) When a copy of a judgment containing a finding of disqualification is laid before the Assembly pursuant to subsection (1), the judgment thereupon stands referred to the Select Standing Committee on Privileges and Elections, Standing Orders and Printing for its review and the Committee shall, on completion of its review, report to the Assembly.

Disqualification proceedings originating in the Assembly

40(1) Notwithstanding anything in this Division, the Legislative Assembly may declare a Member to be disqualified from membership of the Assembly for any cause that is sufficient in the opinion of the Assembly, whether or not the cause relates to any ground of disqualification under section 30, 31, 32 or 33.

(2) A motion in the Assembly for the disqualification of a Member

(a) shall set out the particulars of the allegations, and

(b) shall, on being first placed on the order paper of the Assembly, stand referred to the Select Standing Committee on Privileges and Elections, Standing Orders and Printing.

(3) The Select Standing Committee shall

(a) hear and determine the allegations in the motion,

(b) has all the privileges, immunities and powers of the Assembly acting as a court under Division 2 of Part 1 for the purpose of the hearing and determination, and

(c) shall, after hearing and determining the allegations, report to the Assembly.

Determination by the Assembly

41(1) After the tabling of the Select Standing Committee's report under section 39 or 40, the Assembly may by resolution

(a) declare the Member to be disqualified from membership of the Assembly, or

(b) censure the Member if it finds that the disqualification is not warranted in the circumstances but the Member is nevertheless deserving of censure, or

(c) declare that the Member is not disqualified if it finds that the allegations in the motion are not proven or that disqualification is not warranted in the circumstances.

(2) If the Assembly censures the Member pursuant to subsection (1)(b), the Assembly may also make any order of punishment that it could make under

section 13 if the resolution under this section had been a motion of censure passed under that section.

(3) A declaration of disqualification by the Assembly made under subsection (1)(a), or a finding of disqualification under section 30 by the Court, operates to expel the Member from membership of the Assembly and to vacate his seat in the Assembly.

PART 3

REMUNERATION OF MEMBERS

Members' Allowances, Expenses and Benefits

Members' indemnity and expense allowances

42(1) There shall be paid to each Member

(a) an indemnity allowance at the rate of $21 000 a year, and

(b) an expense allowance at the rate of $6 176 a year.

(2) The expense allowance referred to in subsection (1) is provided to each Member to pay for expenses of that Member incident to the discharge of his duties as a Member that are not otherwise provided for.

(3) The allowances under this section shall be paid in monthly amounts of not more than 1/12 of the rate of the yearly allowance.

(4) For the purpose of computing the amount of an allowance payable under this section the Member is deemed

(a) to have been a Member from the polling day of the election in which he was a candidate, and

(b) when the Legislature is dissolved, to remain a Member until

(i) the day preceding the polling day of the general election following the dissolution, or

(ii) the date of the Member's death,

whichever occurs first.

NOTE: 42 See section 52 of the present Act.

Deductions from allowances

43 Notwithstanding section 44, deductions shall be made at the rate of $75 a day from the indemnity allowance and at the rate of $25 a day from the expense allowance of a Member for each day in excess of 5 sitting days during a session on which the Member did not either take his seat in the Assembly or a meeting of a committee of the Legislative Assembly otherwise than by reason of

(a) illness or injury,

(b) attendance at a meeting or event as a representative of the Assembly, the Speaker, the Crown or the Commonwealth Parliamentary Association.

NOTE: 43 See section 56 of the present Act.

Declaration of absence

44 A Member shall, within a reasonable time after the end of a session, file a declaration with the Clerk setting out the sitting days during the session on which he did not attend the sitting or a meeting of a committee of the Legislative Assembly and the reasons for his absence in each case.

NOTE: 44 New.

Allowance for temporary residence in Edmonton

45(1) Subject to subsection (2), where it is reasonably necessary for a Member to live in a temporary residence in or near Edmonton for the purpose of attending sittings of the Legislative Assembly, the Member may, on filing a declaration under section 44, claim and be paid an allowance at the rate of $50 a day for each day of the session during which he was a Member and maintained that residence.

(2) A Member is not entitled to receive a payment under this section in respect of

(a) any day on which a deduction from his allowances is made under section 44, or

(b) each day during a period of adjournment of more than 8 days, not counting the days on which the Assembly adjourned and reconvened.

NOTE: 45 See section 56 of the present Act.

Allowances and expenses for committee work

46(1) During intervals between sessions of the Legislative Assembly or while it is adjourned for more than 5 days, a Member who serves on a

committee appointed by resolution of the Assembly is entitled to be paid in respect of that service

(a) an allowance of $75 a day for each day on which he

(i) attends a meeting of the committee, or

(ii) is otherwise engaged in the business and affairs of the committee,

(b) his reasonable living expenses incurred in the course of

(i) travelling to or from committee meetings or being otherwise engaged in the business and affairs of the committee, and

(ii) attending committee meetings or being otherwise engaged in the business and affairs of the committee,

and

(c) his reasonable travelling expenses for travel otherwise than by private automobile, or an allowance for every kilometre for every kilometre travelled by private automobile at a rate per kilometre prescribed by the Speaker on the recommendation of the Members' Services Committee.

(2) No member is entitled to be paid any amount under subsection (1) in respect of service on more than one committee on the same day.

NOTE: 46 See section 62(1) of the present Act.
Members' fees and expenses for service on boards, etc.

47(1) Unless the Lieutenant Governor in Council orders otherwise, a Member is entitled to the payment of his reasonable living and travelling expenses incurred in the course of

(a) serving as a member of any board, commission, committee or other body to which he is appointed by the Lieutenant Governor in Council, a Minister of the Crown or by a regulation,

(b) attending a meeting of the Commonwealth Parliamentary Association or one or more branches of that Association or serving as a delegate to a meeting of any other parliamentary association or any of its divisions, or

(c) attending any meeting or event as a representative of the Assembly, the Speaker of the Assembly, the Government of Alberta or a Minister of the Crown.

(2) For the purposes of subsection (1),

(a) a Member may be paid for travelling or living expenses by way of reimbursement for those expenses from the Government or the board, commission, committee or other body, as the case may be, or, the Government or the board, commission, committee or other body, as the case may be, may pay those expenses directly to the creditor entitled to payment in respect of them;

(b) the Provincial Treasurer shall determine in each case the reasonableness of any travelling or living expenses in the absence of an order of the Lieutenant Governor in Council that fixes the amount of those expenses or the rate at which those expenses are to be calculated;

(c) any registration fee payable in connection with the attendance by a member of the Assembly at any meeting or event shall be deemed to be a reasonable travelling or living expense.

(3) If a Member holds office as a member of a board, commission, committee or other body to which he is appointed by the Lieutenant Governor in Council or a Minister of the Crown or by a regulation, he may be paid fees by the Crown or by that body only if the Lieutenant Governor in Council

(a) authorizes the payment of those fees, and

(b) prescribes the amount or rate of those fees.

(4) The Provincial Treasurer shall, after the end of each Government fiscal year, prepare a report showing

(a) the name of each board, commission, committee or other body referred to in subsection (1) or (3) and the Members of the Legislative Assembly who served on them during that fiscal year, and

(b) the amounts paid in that fiscal year by the Government as fees and as travelling and living expenses under this section in respect of each Member of the Legislative Assembly and the persons to whom and the time at which those amounts were paid,

and on preparation of the report shall lay the report before the Assembly if it is then sitting or, if it is not then sitting, shall lay tne report before the Assembly within 15 days after the commencement of the next sitting of the Assembly.

(5) A Member may be provided with any service or thing or the use of any thing, if the cost of providing it is paid from a supply vote.

NOTE: 47 See section 12 of the present Act.

Disability benefits

48(1) In this section "disability benefits" or "benefits" means payments made pursuant to the regulations under this section.

(2) The Lieutenant Governor in Council may make regulations

(a) authorizing the payment by the Provincial Treasurer of disability benefits to persons who become mentally or physically disabled while holding any of the following offices:

(i) a Member of the Legislative Assembly,

(ii) the Speaker, the Deputy Speaker or the Deputy Chairman,

(iii) the Leader of Her Majesty's loyal opposition, or

(iv) a member of the Executive Council;

(b) subject to subsection (3), prescribing the amounts payable as disability benefits or the methods to be used to calculate disability benefits;

(c) prescribing the conditions that must be met before disability benefits are payable in any case;

(d) prescribing the circumstances under which disability benefits are to be reduced or are no longer to be paid;

(e) prescribing the procedure for determining any question arising as to whether disability benefits are payable or the amount of the benefit

payable and for reviewing any decision regarding eligibility for benefits or the amount of any benefit.

(3) Regulations made pursuant to this section shall be substantially the same, as far as is practical, as regulations that relate to long term disability income continuance made pursuant to the *Public Service Act*.

NOTE: 48 See section 63 of the present Act.

Benefits related to health services

49 The following benefits may be paid by the Government to or on behalf of Members of the Legislative Assembly:

(a) the payment of all or part of premiums payable in respect of a group insurance contract to which the Government is a party for the provision of medical, dental, surgical or health services;

(b) benefits payable under any plan operated by or on behalf of the Government to provide medical, dental, surgical or health services.

NOTE: 49 See section 63.1 of the present Act.

Expense allowance for constituency office and services

50(1) In this section "rental office space" includes office space that is in a fixed location and office space that is in a structure capable of being moved from place to place.

(2) There may be paid in respect of each Member of the Legislative Assembly to enable him to perform his duties as a Member in his electoral division the actual cost of

(a) rental office space, including furnishings, and

(b) office and secretarial assistance and services,

required by the Member in an aggregate amount not exceeding in respect of any fiscal year the maximum amount prescribed by the Speaker on the recommendation of the Members' Services Committee.

(3) There may be provided to each Member the office supplies and equipment necessary for the operation of the rental office space referred to in subsection (2).

(4) The Clerk shall, on the request of a member, enter into the agreements on behalf of the Member that are necessary to provide the things and services referred to in subsection (2) to the Member, and shall arrange for the payment of the cost of them.

(5) Notwithstanding subsection (4) but subject to subsection (2), the Clerk may, on the production of receipts, reimburse a Member for minor expenses incurred by him that are necessary for and incidental to the purpose of an agreement under subsection (4).

(6) Nothing in this section

(a) requires rental office space to be located within the boundaries of the electoral division the Member represents,

(b) affects the right of a Member to have the Clerk enter into an agreement on his behalf under subsection (4) in respect of rental furnishings, secretarial assistance and services, or any of them, notwithstanding that there is no agreement in respect of rental office space for that Member, or

(c) prohibits an agreement under subsection (4) whereby a Member shares with one or more other persons, in the proportions they determine, the use and cost of any of the things and services referred to in subsection (2).

NOTE: 50 See section 54 of the present Act.

Salaries and other Allowances

Salaries of Speaker, Deputy Speaker and Deputy Chairman

51(1) There shall be paid to the Speaker, the Deputy Speaker and the Deputy Chairman

(a) a salary at the rate of

(i) $19 600 a year, in the case of the Speaker,

(ii) $7300 a year, in the case of the Deputy Speaker, and

(iii) $4800 a year, in the case of the Deputy Chairman,

and

(b) their reasonable travelling and living expenses incurred in the performance of the duties of their respective offices.

(2) For the purpose of computing the amount of a salary payable under subsection (1) to the Deputy Speaker or Deputy Chairman,

(a) the Member who first occupies the office after the commencement of the first session of the Legislature following a general election is

deemed to have held the office from the polling day of that general election, and

(b) when the Legislature is dissolved, the Member then holding the office of Deputy Speaker or Deputy Chairman is deemed to remain in the office until

(i) the day preceding the polling day of the general election following the dissolution, or

(ii) the date of his death,

whichever occurs first.

(3) If the holder of the office of Speaker, Deputy Speaker or Deputy Chairman changes, then for the purpose of computing the amount of salary payable to the Member succeeding to the office, the Member is deemed to have held the office from the day following the day on which his predecessor ceased to hold it.

NOTE: 51 See section 52 of the present Act.

Salary of Leader of the Opposition

52(1) There shall be paid to the Member who is recognized as the Leader of Her Majesty's loyal opposition a salary at the rate of $32 000 a year.

(2) If there are 2 or more opposition parties represented in the Assembly that each hold the same number of seats and that number is the next highest number of seats held by representatives of a party other than the government party, then,

(a) for the purposes of this section and sections 48 and 53 and of the *M.L.A. Pension Act*, each of those leaders is deemed to be the Leader of Her Majesty's loyal opposition, and

(b) the salary payable under subsection (1) shall be divided equally among those leaders.

(3) For the purpose of computing a salary payable under this section

(a) the Member who first occupies the office of Leader of Her Majesty's loyal opposition after the commencement of the first session of the Legislature following a general election is deemed to have held the office from the polling day of that general election,

(b) if the holder of the office of Leader of Her Majesty's loyal opposition changes, the Member succeeding to the office is deemed to have occupied it from the day following the day on which his predecessor ceased to occupy it, and

(c) when the Legislature is dissolved, the Member holding the office of Leader of Her Majesty's loyal opposition is deemed to remain in that office until

(i) the day preceding the polling day of the general election following the dissolution, or

(ii) the date of his death,

whichever is earlier.

NOTE: 52 See section 53(4) of the present Act.

Allowance to leader of recognized opposition party

53(1) In this section, "recognized opposition party" means a party that

(a) is represented in the Legislative Assembly by at least 4 Members, and

(b) received at least 5% of the popular vote in the general election immediately preceding the year in which the allowance in subsection (2) is to be paid.

(2) There shall be paid to a member who is the leader of a recognized opposition party, except the Leader of Her Majesty's loyal opposition, an allowance at the rate of $5000 a year.

NOTE: 53 See section 55.3 of the present Act.

Adjustment

Adjustment of allowances, salaries and deductions

54(1) If in December of a calendar year, the average of the All-items Consumer Price Index for Edmonton and Calgary for that year published by Statistics Canada is at least 5% more than that average in December of the immediately preceding year for that year, the allowances, salaries and deductions provided for in sections 42, 43, 51, and 52 shall be increased by 5%, effective January 1 of the year following the year in which the increase occurs.

(2) If in December of a calendar year, the average of the All-items Consumer Price Index for Edmonton and Calgary for that year published by Statistics Canada is at least 5% less than that average in December of the immediately preceding year for that year, the allowances, salaries,

expenses and deductions provided for in sections 42, 43, 51 and 52 shall be decreased by 5%, effective January 1 of the year following the year in which the decrease occurs.

(3) If the percentage increase or decrease for the calendar year referred to in subsection (1) or (2) is less than 5%, it shall be carried over and added to the percentage increases or decreases in every following year until the cumulative total in December of a year reaches at least 5% and, in that case, subsection (1) or (2), as the case may be, applies to that year.

NOTE: 54 See section 58 of the present Act.

PART 4

THE EXECUTIVE COUNCIL

Salaries of Executive Council members

55(1) There shall be paid to the members of the Executive Council

(a) a salary at the rate of

(i) $39 300 a year, in the case of the President of the Executive Council,

(ii) $32 000 a year, in the case of a member designated otherwise than as a Minister without Portfolio, and

(iii) $22 700, in the case of a member designated as a Minister without Portfolio,

and

(b) reasonable allowances for travelling and living expenses incurred in the performance of their duties as members of the Executive Council at rates prescribed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council may, by order, authorize the payment of a reasonable amount for the moving expenses of a person who,

(a) as a result of his appointment as a member of the Executive Council, moves his residence to Edmonton or its vicinity, or

(b) as a result of his ceasing to be a member of the Executive Council, moves his residence from Edmonton or its vicinity to another place in Alberta.

(3) Section 54 applies, with the necessary changes, to the salaries payable under this section.

NOTE: 55 See section 57 of the present Act.

President's representational allowance

56 There shall be paid to the President of the Executive Council a representational allowance at the rate of $5000 a year.

NOTE: 56 See section 59 of the present Act.

Annual reports

57 A member of the Executive Council who is the head of a department of the Government shall, after the end of each Government fiscal year,

prepare a general report summarizing the transactions and affairs of his department in that year and shall

(a) if the Legislative Assembly is sitting when the report is completed, lay the report before the Assembly, or

(b) if the Legislative Assembly is not sitting when the report is completed, lay the report before the Assembly within 15 days after the commencement of the sitting next following the completion of the report.

NOTE: 57 See section 36 of the present Act.

PART 5

GENERAL

Bills and Acts

58(1) When a Bill passed by the Assembly receives the assent of the Lieutenant Governor, the Clerk shall endorse on the official copy of the Bill immediately after its title, the date on which the Lieutenant Governor assented to the Bill.

(2) If a Bill is reserved by the Lieutenant Governor for the signification of the pleasure of the Governor General, the Clerk shall endorse on the official copy of the Bill

(a) the date on which it was so reserved, and

(b) the date on which the Lieutenant Governor signified by speech or message to the Legislative Assembly or by Proclamation that the Bill was

laid before the Governor General and that the Governor General was pleased to assent to the Bill.

(3) An endorsement made pursuant to subsection (1) or (2)(b) is a part of the Act.

(4) The official copies of all Bills passed by the Assembly shall remain in the custody of the Clerk.

(5) The Clerk shall affix the Great Seal of the Province to certified copies of Acts

(a) intended for transmission to the Secretary of State or required to be used in evidence before a court, and

(b) in any other case in which the Lieutenant Governor in Council so directs.

(6) A copy of an Act certified and sealed under subsection (5) shall be held to be a duplicate original, and also to be evidence of the Act and of its contents as if printed by lawful authority.

(7) The Clerk shall furnish a certified copy of the official copy of an Act to a person applying for it on receipt of a fee prescribed by the Lieutenant Governor in Council.

(8) The Clerk shall

(a) insert at the foot of each copy of an Act required to be certified under subsection (7) a written certificate signed and authenticated by him to the effect that the copy is a true copy, and

(b) add the following words if the Act is disallowed after it comes into force:

"but disallowed by the Governor General in Council, which disallowance took effect on the . . . . . day of . . . . . , 19 . . . . ".

NOTE: 58 See sections 64 to 68 of the present Act.

Protection against action for publication of reports, etc.

59 In any civil proceedings or prosecution against a person for or on account of or in respect of the publication of any copy of any report, papers, votes or proceedings printed by or under the authority of the Legislative Assembly

(a) the defendant at any stage of the proceedings may lay before the court

(i) the report, papers, votes or proceedings and the copy, and

(ii) an affidavit verifying the report, papers, votes or proceedings and the correctness of the copy,

and

(b) the court shall immediately stay the civil proceedings and the same or every writ or process issued thereon shall be finally put an end to, determined and superseded by virtue of this Act.

NOTE: 59 See section 48 of the present Act.

Evidence in action re publication of reports, etc.

60(1) On the trial of an action against a person for printing an extract from or an abstract of any report, papers, votes or proceedings printed by or under the authority of the Legislative Assembly,

(a) the report, papers, votes or proceedings may be given in evidence under the general issue or denial, and

(b) it may be shown that the extract or abstract was published bona fide and without malice.

(2) If in the opinion of the court or jury, as the case may be, the extract or abstract was published bona fide and without malice, judgment shall be rendered or a verdict shall be entered for the defendant.

NOTE: 60 See section 49 of the present Act.

Journals as evidence

61 In proceedings referred to in sections 59 and 60, a copy of the journals of the Legislative Assembly purporting to be printed by its order shall be admitted as evidence of the journals and their contents, without proof that the copy was so printed.

NOTE: 61 See section 50 of the present Act.

PART 6

CONSEQUENTIAL, REPEAL AND COMMENCEMENT

Consequential Amendments

Amendments to the Election Act

62(1) *The Election Act is amended by this section.*

(2) Section 1 is amended

(a) in clause (b) by repealing subclause (i) and by substituting the following:

(i) who is a member of the Legislative Assembly,

(b) by repealing clause (e.1) and by substituting the following:

(e.1) "election" means the election of a person as a member of the Legislative Assembly conducted under this Act;

(3) Section 5(1) is amended by striking out "The Office of the Chief Electoral Officer is continued and consists of" *and substituting* "There shall be a department of the public service of Alberta called the Office of the Chief Electoral Officer consisting of".

(4) Section 52 is repealed and the following is substituted:

52 A person is eligible to be nominated as a candidate in an election if on the day his nomination paper is filed he

(a) is a Canadian citizen,

(b) is of the full age of 18 years or will be that age on polling day,

(c) has been ordinarily resident in Alberta continuously from the day 6 months immediately preceding polling day,

(d) is not prohibited from being nominated as a candidate by reason of section 173 or 175,

(e) is not prohibited from being nominated as a candidate by reason of section 36(1)(a) of the *Election Finances and Contributions Disclosure Act*, and

(f) is not a member of the Senate or House of Commons of Canada.

(5) *Section 136(6) is amended by striking out* "declared elected" *and substituting* "to be declared elected pursuant to section 137".

(6) *Section 140(2) is amended by striking out* "Certificate of Final Result" *and substituting* "Statement of Official Results".

(7) *Section 173 is amended*

(a) *in subsection (1) by striking out* "the election of that candidate is void" *and substituting* "the election in which the candidate was nominated is void",

(b) *in subsection (2) by striking out* "the Court making its report under subsection (1)" *and substituting* "the date on which the Chief Electoral Officer receives the report of the Court under subsection (1)", *and*

(c) in subsection (2) by repealing clause (a) and substituting the following:

(a) being nominated as a candidate under this Act,

(a.1) being elected to any public office under any other Act of the Legislature,

(8) Section 174 is amended

(a) in subsection (1) by striking out "the election of that candidate" *and substituting* "the election in which the candidate was nominated", *and*

(b) in subsection (2) by striking out "of the candidate".

(9) Section 175(1) is amended by striking out "date of the conviction" *and substituting* "date on which the Chief Electoral Officer receives the report of the Court under section 174".

(10) The following section is added after section 176:

176.1 On receiving a report from the Court pursuant to section 173(1) or 174(1), the Chief Electoral Officer shall inform the Lieutenant Governor in Council of the report and the Lieutenant Governor in Council shall order the issue of a writ for another election in that electoral division.

(11) Section 177(1) is amended by striking out "a second election is held, the second election is a new election and" *and substituting* "a new election is held pursuant to section 176.1, the new election".

(12) Section 179 is repealed and the following is substituted:

179(1) A petition may be filed with the Court in accordance with this Part to void an election by reason of the undue return or undue election of a candidate as the member of the Legislative Assembly for an electoral division.

(2) The petition

(a) may be filed only by

(i) a candidate defeated in the election, or

(ii) a person who on the polling day of the election was qualified to vote at the election,

(b) except as provided in clause (c), shall be filed with the Court within 30 days after the date of the issue of the Alberta Gazette containing the notice published pursuant to section 147, and

(c) may be filed with the Court at any time during the continuation of the Legislative Assembly of which the elected candidate is a member, if the grounds for the petition relate only to the eligibility of the respondent as a candidate at the time of the filing of his nomination paper.

(13) Section 180 is amended

(a) by repealing subsection (1)(e), and

(b) in subsection (2) by striking out "respondant" *and substituting* "respondent".

(14) Section 184(d) is amended by striking out "set aside or".

(15) Sections 185, 186 and 188 are repealed.

(16) Section 192 is amended by repealing subsections (2) to (5) and substituting the following:

(2) If the judgment contains findings that the respondent was unduly returned or elected,

(a) the election in which the respondent was a candidate is void upon the receipt of the judge's report by the Chief Electoral Officer,

(b) the Chief Electoral Officer shall inform the Lieutenant Governor in Council of the report, and

(c) the Lieutenant Governor in Council shall order a writ for another election in that electoral division unless the Legislature has since been dissolved.

(17) Section 194 is amended

(a) in subsection (1) by striking out "Whether or not the petitioner claims the seat for a candidate other than the respondent, the" *and substituting* "The",

(b) in subsection (2) by striking out "If the petitioner has not by his petition claimed the seat for candidate other than the respondent he may" *and substituting* "If a statement is filed under subsection (1), the petitioner may", *and*

(c) by repealing subsection (3).

NOTE: **62** This section will amend RSA 1980, c. E-2. Section 52 presently reads:

> *52 A person is eligible to be a candidate at an election if he is an elector and is not disqualified under the Legislative Assembly Act or any other Act.*

Amendments to the M.L.A. Pension Act

63(*1*) *The M.L.A. Pension Act is amended by this section.*

(*2*) *Section 1(1) is amended*

(*a*) *by adding the following after clause (a):*

(a.1) "Deputy Chairman" means the Deputy Chairman of Committees;

(a.2) "Deputy Speaker" means the Deputy Speaker and Chairman of Committees,

(*b*) *by adding the following after clause (b):*

(b.1) "Leader of the Opposition" means the member of the Legislative Assembly who is the recognized leader of Her Majesty's loyal opposition;

(*c*) *in clause (b) by striking out* "section 63 of the *Legislative Assembly Act*" *and substituting* "section 48 of the *Legislative Assembly Act, 1983*";

(*d*) *in clause (c)(i) by striking out* "or the Deputy Speaker or the Leader of Her Majesty's loyal opposition" *and substituting* ", Deputy Speaker, Deputy Chairman or Leader of the Opposition".

(*3*) *Section 2(1) is amended by striking out* "the allowances payable to him prior to April 1, 1970 under section 52 of the *Legislative Assembly*

Act" and substituting "the indemnity and expense allowance payable to him prior to April 1, 1970 under the provisions of the *Legislative Assembly Act* then in force".

(4) Section 3(3)(a)(i) and (ii) is amended by adding ", 1983" after "Legislative Assembly Act".

(5) Section 7(1) is amended

(a) by striking out "section 57 of the *Legislative Assembly Act" and substituting* "the provisions of the *Legislative Assembly Act* then in force", *and*

(b) by striking out "compensation so payable to him after that date" *and substituting* "compensation or salary payable to him after that date under the *Legislative Assembly Act, 1983* or its predecessor".

(6) Section 7(3) is amended by striking out "section 57 of the *Legislative Assembly Act" and substituting* "section 55 of the *Legislative Assemby Act, 1983".*

(7) Section 8(2)(a)(i) and (ii) is amended by striking out "section 57 of the *Legislative Assembly Act" and substituting* "the *Legislative Assembly Act, 1983* or its predecessor".

(8) The heading for Part 3 is amended by adding ", DEPUTY CHAIRMAN" *after* "DEPUTY SPEAKER".

(9) Section 12 is amended

(a) in subsection (1) by striking out "and the recognized leader of Her Majesty's loyal opposition" *and substituting* "and Deputy Chairman and the Leader of the Opposition",

(b) in subsection (1) by striking out "section 53(1) and (4) of the *Legislative Assembly Act*" *and substituting* "sections 51 and 52 of the *Legislative Assembly Act, 1983* and their predecessors",

(c) in subsection (2.1) by striking out "allowance of the Speaker, Deputy Speaker and the recognized leader of Her Majesty's loyal opposition" *and substituting* "respective salaries of the Speaker, Deputy Speaker, Deputy Chairman and Leader of the Opposition",

(d) in subsection (4) by striking out "A member of the Legislative Assembly who holds the office of Speaker, Deputy Speaker or leader of Her Majesty's loyal opposition" *and substituting* "A person who holds the office of Speaker, Deputy Speaker, Deputy Chairman or Leader of the Opposition",

(e) in subsection (5) by striking out "a member of the Legislative Assembly who holds the office of Speaker, Deputy Speaker or leader of Her Majesty's loyal opposition" *and substituting* "a person who holds the office of Speaker, Deputy Speaker, Deputy Chairman or Leader of the Opposition",

(f) in subsection (6)

(i) by striking out "and the recognized leader of Her Majesty's loyal opposition" *and substituting* ", Deputy Chairman and Leader of the Opposition",

(ii) by striking out "and recognized leader of Her Majesty's loyal opposition" *and substituting* ", Deputy Chairman and Leader of the Opposition",

and

(g) in subsection (7) by striking out "when a member of the Legislative Assembly has contributed in relation to any one office" *and substituting* "When a person has contributed to any one of the offices of Speaker, Deputy Speaker, Deputy Chairman or Leader of the Opposition".

(10) Section 13 is amended

(a) by adding the following after subsection (2):

(2.1) The pensionable service of the Deputy Chairman shall be any term or terms of his service for which he has made contributions under sections 12 and 15, but shall not exceed 20 years.

(b) in subsection (3) by striking out "leader of Her Majesty's loyal opposition" *and substituting* "Leader of the Opposition",

(c) in subsection (4) by striking out "or leader of Her Majesty's loyal opposition" *and substituting* "Deputy Chairman or Leader of the Opposition",

(d) in subsection (4)(a)(i) and (ii) by striking out "section 53(1) of the *Legislative Assembly Act" wherever it occurs and substituting* "section 51 of the *Legislative Assembly Act, 1983";*

(e) in subsection (4)(a) by adding the following after subclause (ii):

(ii.1) in the case of the Deputy Chairman,

(A) his annual salary under section 51 of the *Legislative Assembly Act, 1983*, if his years of service do not exceed 3 years, or

(B) his average annual salary under section 51 of the *Legislative Assembly Act, 1983*, for the 3 consecutive years of his service during which his salary was the highest, when his years of service exceed 3 years,

(f) in subsection (4)(a)(iii)

(i) by striking out "leader of Her Majesty's loyal Opposition" *and substituting* "Leader of the Opposition", *and*

(ii) by striking out "section 53(4) of the *Legislative Assembly Act*" *wherever it occurs and substituting* "section 52 of the *Legislative Assembly Act, 1983*".

(11) Sections 14(3), 15, 16 and 19(1) are amended by striking out "or leader of Her Majesty's loyal opposition" *wherever it occurs and substituting* ", Deputy Chairman or Leader of the Opposition".

Amendments to other Acts

NOTE: 63 This section will amend RSA 1980, c. M-18.

64(1) The Alberta Evidence Act is amended by repealing section 35(6) and substituting the following:

(6) In this section, "employee" means a person employed in the public service of Alberta, whether his employment is permanent or temporary or on a full-time or part-time basis.

NOTE: 64(1) This subsection will amend RSA 1980, c. A-21.

(2) The Alberta Government Telephones Act is amended by repealing section 43.

NOTE: (2) This subsection will amend RSA 1980, c. A-23. Section 43 presently reads:

43 The making of a contract for telephone or other telecommunication service by a member of the Legislative Assembly with the commission does not operate to forfeit or vacate his seat in the Legislature or affect his right to sit or vote therein.

(3) The Alberta Resources Railway Corporation Act is amended by repealing section 3(4).

NOTE: (3) This subsection will amend RSA 1980, c. A-36. Section 3(4) presently reads:

(4) In the case of members of the Corporation who are members of the Legislative Assembly, the acceptance of travelling and living expenses payable under subsection (3) shall be authorized by the Lieutenant Governor in Council.

(4) The Auditor General Act is amended in section 1(1)

(a) by repealing clause (c)(i) and substituting the following:

(i) the Legislative Assembly Office,

(b) by repealing clause (g) and substituting the following:

(g) "Select Standing Committee" means the Select Standing Committee on Legislative Offices;

NOTE: (4) This subsection will amend RSA 1980, c. A-49.

(5) The Commissioners for Oaths Act is amended in section 6 by striking out "or member elect" *wherever it occurs.*

NOTE: (5) This subsection will amend RSA 1980, c. C-19. Section 6 presently reads:

6 A member or member elect of the Legislative Assembly of Alberta, a member or member elect from Alberta of the House of Commons of Canada, a member of the Senate of Canada who at the time of his appointment as a senator is a resident of Alberta, a member of a municipal council in Alberta or a member of a board of trustees of a school district or school division in Alberta is ex officio a commissioner empowered to administer oaths and take and receive affidavits, declarations and affirmations in or outside Alberta for use in Alberta.

(6) The Electoral Boundaries Commission Act is amended by repealing section 4(3).

NOTE: (6) This subsection will amend RSA 1980, c. E-4. Section 4 presently reads in part:

(2) The members of a Commission shall be paid their reasonable travelling and living expenses while absent from their ordinary place of residence and in the course of their duties as members at the rates the Lieutenant Governor in Council prescribes.

(3) A person is not disqualified as a member of the Legislative Assembly by reason only of accepting payment pursuant to subsection (2).

(7) The Financial Administration Act is amended

(a) by repealing section 1(1)(c)(iv) and substituting the following:

(iv) the Legislative Assembly Office,

(b) in section 26(4)(a) by striking out "the *Legislative Assembly Act*,",

(c) in section 33(1)

(i) by repealing clause (b)(i) and substituting the following:

(i) the Legislative Assembly Office,

(ii) as to clause (c) by adding "and Chairman of Committees" *after* "Deputy Speaker",

(iii) by repealing clause (c)(i)(A) and substituting the following:

(A) the officers and staff of the Legislative Assembly Office, and

(iv) by repealing clause (d)(i) and substituting the following:

(i) the Clerk of the Legislative Assembly with respect to the Legislative Assembly Office,

NOTE: (7) This subsection will amend RSA 1980, c. F-9. Sections 1(1)(c), 26(4) and 33(1)(b), (c) and (d) presently read:

1(1) In this Act,

(c) "department" means

(i) a department of the public service of Alberta established by an Act of the Legislature,

(ii) a part of the public service of Alberta that is not part of a department referred to in subclause (i) and that is designated as a department by the Lieutenant Governor in Council for the purposes of this Act, or

(iii) any other part of the public service of Alberta,

but does not include

(iv) the officers and employees of the Legislative Assembly,

(v) the Auditor General and the staff of the Office of the Auditor General,

(vi) the Ombudsman and the staff of the Office of the Ombudsman, and

(vii) the Chief Electoral Officer and the staff of the Office of the Chief Electoral Officer;

(4) Subsection (1) does not apply with respect to a pecuniary penalty, fine or forfeiture

(a) imposed by or under the Legislative Assembly Act, the Election Act or the Election Finances and Contributions Disclosure Act, or

(b) recoverable in respect of an offence committed in connection with the election of a member of the Legislative Assembly.

33(1) In this Part,

(b) "department" includes

(i) the officers and employees of the Legislative Assembly,

(ii) the Auditor General and the staff of the Office of the Auditor General,

(iii) the Ombudsman and the staff of the Office of the Ombudsman, and

(iv) the Chief Electoral Officer and the staff of the Office of the Chief Electoral Officer;

(c) "department head" includes

(i) the Speaker or, in the event of the absence or inability to act of the Speaker or if there is no Speaker, the Deputy Speaker, with respect to

(A) the officers and employees of the Legislative Assembly, and

(B) the Chief Electoral Officer and the staff of the Office of the Chief Electoral Officer,

and

(ii) the Chairman of the Select Standing Committee on Legislative Offices or, in the event of the absence or inability to act of the Chairman or if there is no Chairman, the Deputy Chairman, with respect to

(A) the Auditor General and the staff of the Office of the Auditor General, and

(B) the Ombudsman and the staff of the Office of the Ombudsman;

(d) "deputy head" includes

(i) the Clerk of the Legislative Assembly with respect to the officers and employees of the Legislative Assembly,

(ii) the Auditor General with respect to the Office of the Auditor General,

(iii) the Ombudsman with respect to the Office of the Ombudsman, and

(iv) the Chief Electoral Officer with respect to the Office of the Chief Electoral Officer;

(8) The Glenbow-Alberta Institute Act is amended in section 4(3) by striking out "and the acceptance of travelling and other expenses shall be authorized by the Lieutenant Governor in Council".

NOTE: (8) This subsection will amend RSA 1980, c. G-5.

(9) The Homestead Lease Loan Act is amended in section 3(2) by striking out "Legislative Assembly" *and substituting* "Legislature".

NOTE: (9) This subsection will amend RSA 1980, c. H-9.

(10) The Judicature Act is amended in section 39(4) by striking out "Legislative Assembly" *and substituting* "Legislature".

NOTE: (10) This subsection will amend RSA 1980, c. J-1. Section 39(4) presently reads:

(4) The Legislative Assembly is not dissolved by the demise of the Crown and continues as if the demise had not occurred.

(11) The M.L.A. Compensation Act is amended in section 1(c)

(a) as to subclause (i) by striking out "sessions" *and substituting* "sittings", *and*

(b) as to subclause (ii) by adding "meetings of" *before* "a committee of the Legislative Assembly".

NOTE: (11) This subsection will amend RSA 1980, c. M-17. Section 1(c) presently reads:

1 In this Act,

(c) "duty of a member of the Legislative Assembly" incudes

(i) travelling to and from a committee of the Legislative Assembly,

(iii) travelling inside or outside Alberta on the business of the Legislative Assembly or of a committee of it or on the business of the Government of Alberta, and

(iv) in the case of a member of the Executive Council, all his duties as a member of the Executive Council;

(12) The Notaries Public Act is amended in section 4 by striking out "or member elect" *wherever it occurs.*

NOTE: (12) This subsection will amend RSA 1980, c. N-11. Section 4 presently reads:

> *4 A member or member elect of the Legislative Assembly of Alberta, a member or member elect from Alberta of the House of Commons of Canada or a member of the Senate of Canada who at the time of his appointment as a senator is a resident of Alberta is ex officio a notary public for Alberta.*

(13) The Occupational Health and Safety Act is amended in section 4(5)(b) by striking out "and, in the case of members of the Council who are members of the Legislative Assembly, the acceptance of travelling and living expenses shall be authorized by the Lieutenant Governor in Council.".

NOTE: (13) This subsection will amend RSA 1980, c. O-2. Section 4 relates to the Occupation Health and Safety Council. Section 4(5) presently reads:

> *(5) The members of the Council shall be paid*
>
> *(a) such remuneration as the Lieutenant Governor in Council may prescribe, and*
>
> *(b) their reasonable travelling and living expenses while absent from their ordinary place of residence and in the course of their duties as members of the Council and, in the case of members of the Council who are members of the Legislative Assembly, the acceptance of the travelling and living expenses shall be authorized by the Lieutenant Governor in Council.*

(14) The Oil Sands Technology and Research Authority Act is amended in section 3(3) by striking out "and, in the case of members of the Authority who are members of the Legislative Assembly, the acceptance of

the travelling and living expenses shall be authorized by the Lieutenant Governor in Council".

NOTE: (14) This subsection will amend RSA c. O-6. Section 3(3) presently reads:

(3) The members of the Authority shall be paid by the Authority their reasonable travelling and living expenses while absent from their ordinary place of residence and in the course of their duties as members of the Authority, in accordance with the by-laws of the Authority and, in the case of members of the Authority who are members of the Legislative Assembly. The acceptance of the travelling and living expenses shall be authorized by the Lieutenant Governor in Council.

(15) The Public Service Act is amended

(a) in section 1 by repealing clauses (b), (c) and (d) and substituting the following:

(b) "department" means

(i) a department of the public service of Alberta established by an Act of the Legislature, or

(ii) a part of the public service of Alberta that is not part of a department referred to in subclause (i) and that is designated as a department by the Lieutenant Governor in Council;

(c) "department head" means

(i) the Speaker or, in the event of the absence or inability to act of the Speaker or if there is no Speaker, the Acting Speaker, with respect to

(A) the Legislative Assembly Office, and

(B) the Office of the Chief Electoral Officer,

(ii) the Auditor General with respect to the Office of the Auditor General,

(iii) the Ombudsman with respect to the Office of the Ombudsman,

(iv) the chairman of the Public Service Employee Relations Board with respect to the staff of that Board, or

(v) the member of the Executive Council having the administration of the department, with respect to any other department;

(d) "deputy head" means

(i) the Clerk of the Legislative Assembly with respect to the Legislative Assembly Office,

(ii) the Auditor General with respect to the Office of the Auditor General,

(iii) the Ombudsman with respect to the Office of the Ombudsman,

(iv) the Chief Electoral Officer with respect to the Office of the Chief Electoral Officer,

(v) the chairman of the Public Service Employee Relations Board, or

(vi) with respect to any other department,

(A) the chief officer of the department, or

(B) if there is more than one chief officer of the department, the chief officer of that part of the department for which he is responsible to the department head;

(b) in section 2 by repealing subsections (1), (2) and (3) and substituting the following:

2(1) Except as otherwise provided in this Act or any other enactment, this Act applies to all departments.

(2) The Auditor General, the Chief Electoral Officer, the Ombudsman and the chairman of the Public Service Employee Relations Board shall be considered as employees for the purposes of this Act except in relation to their appointment, salary and tenure of office or any other conditions prescribed by the Act under which they are appointed.

(3) This Act does not impair nor otherwise affect an already established authority or control of the courts and judges over their officers.

NOTE: (15) This subsection will amend RSA 1980, c. P-31. Sections 1 and 2 presently read in part:

1 In this Act,

(a) "Commissioner" means the Public Service Commissioner appointed pursuant to this Act;

(b) "department" means

(i) a department of the public service of Alberta,

(ii) the officers and staff of the Legislative Assembly, or

(iii) any other part or organizational unit of the public service of Alberta designated as a department by the Lieutenant Governor in Council for the purposes of this Act;

(c) "department head" means

(i) the member of the Executive Council charged with the administration of a department, or

(ii) the Speaker, with respect of the officers and staff of the Legislative Assembly;

(d) "deputy head" means

(i) the Clerk of the Legislative Assembly with respect to the officers and staff of the Legislative Assembly, or

(ii) in any other case, the chief officer of a department;

2(1) This Act applies to all departments of the Government, including employees of the Executive Council, and to the officers and staff of the Legislative Assembly.

(2) The Auditor General, the Chief Electoral Officer, the Ombudsman and the chairman of the Public Service Employee Relations Board

(a) shall be considered as employees for the purposes of this Act except for their appointment, salary and tenure or any other conditions prescribed by the Act under which they are appointed, and

(b) have the powers and authority of a department head and a deputy head for the purposes of this Act in respect of the employees under their supervision.

(3) This Act does not impair nor otherwise affect

(a) the rights and privileges of the Legislative Assembly with regard to the appointment or removal of the officers and staff of the Assembly, or

(b) an already established authority or control of the courts and judges over their officers.

(16) The Public Service Administrative Transfers Act is amended

(a) in section 1 by repealing clause (a) and substituting the following:

(a) "appropriation" means a supply vote as defined in the *Financial Administration Act* or the Heritage Fund vote as defined in that Act;

(b) in section 4(1)(a) by striking out "sections 8(3) and 57(1) of the *Legislative Assembly Act" and substituting* "section 56(1) of the *Legislative Assembly Act, 1983",*

(c) in section 4(1)(b) and (2) by striking out "section 57(1) of the *Legislative Assembly Act" wherever it occurs and substituting* "section 56(1) of the *Legislative Assembly Act, 1983".*

NOTE: (16) This subsection will amend RSA 1980, c. P-32. Sections 1(a) and 4 presently read:

1 In this Act,

(a) "appropriation" means an appropriation as defined in the Financial Administration Act;

4(1) If the administration of an enactment or a part of the public service is transferred under section 2 to a Minister who is not then the head of a department of the public service, the Lieutenant Governor in Council in the same or a subsequent order

(a) may declare that that Minister is, with respect to that enactment or that part of the public service, the head of a department of the public service for the purposes of sections 8(3) and 57(1) of the Legislative Assembly Act and Part 2 of the M.L.A. Pension Act, and

(b) notwithstanding the declaration, may prescribe the rate of annual compensation for that Minister at a rate less than that prescribed in section 57(1) of the Legislative Assembly Act for the head of a public department.

(2) Any compensation paid to a Minister pursuant to subsection (1)(b) shall be deemed for all purposes to be compensation paid to him pursuant to section 57(2) of the Legislative Assembly Act.

(17) The Public Service Employee Relations Act is amended in section 21(1)(i) by adding "Office" *after* "staff of the Legislative Assembly".

NOTE: (17) This subsection will amend RSA 1980, c. P-33.

(18) The Public Service Pension Act is amended

(a) in section 1(c) by repealing subclause (i) and substituting the following:

(i) a person who is appointed to a position in the public service of Alberta and who is employed on a full-time continuous basis for a minimum average of 30 hours per week throughout each year,

(b) in section 37(6) by striking out "the Government or Legislative Assembly" *and substituting* "the Crown in right of Alberta".

NOTE: (18) This subsection will amend RSA 1980 c. P-35. Sections 1(c)(i) and 37(6) presently read:

1 In this Act

(c) "employee" means

(i) a person employed on a full-time continuous basis for a minimum average of 30 hours per week throughout each year by the Government or by the Legislative Assembly,

(6) When a member of the academic staff of a University is transferred to the employ of the Government or Legislative Assembly or to any public body named in section 38, the provisions of this Act apply to him with regard to his service with the University notwithstanding subsection (2)(a).

(19) The Railway Act is amended by repealing section 191 and the heading preceding it.

NOTE: (19) This subsection will amend RSA 1980, c. R-4. Section 191 and its heading presently read:

Minister and Members of the Assembly to be Carried Free

191 The company shall furnish free transportation upon any of its trains for members of the Legislative Assembly with their baggage, and shall also when required haul free of charge any car provided for the use of the Minister.

(20) The Tobacco Tax Act is amended in section 3 by repealing subsection (3).

NOTE: (20) This subsection will amend RSA 1980, c. T-5. Section 3(3) presently reads:

(3) A person acting as an agent under subsection (2)(a) is not thereby made ineligible as a member of the Legislative Assembly.

Repeal

Repeal of RSA 1980, c.L-10

65 The *Legislative Assembly Act* is repealed.

NOTE: 65 This Bill will repeal RSA 1980, c.L-10.

Commencement

Commencement

66 This Act comes into force on Proclamation.

SCHEDULE

DISQUALIFYING OFFICES

Part 1

Judicial Offices

1. Judges of the Provincial Court of Alberta

Part 2

Offices of the Legislature

1. Auditor General of Alberta
2. The Ombudsman under the Ombudsman Act
3. The Chief Electoral Officer under the Election Act

Part 3

Other Disqualifying Offices

The office of chairman or member of any of the following:

1. Alberta Assessment Appeal Board
2. Alberta Assessment Equalization Board
3. The Alberta Educational Communications Corporation
4. Alberta Human Rights Commission

5. The Alberta Liquor Control Board
6. Alberta Racing Commission
7. Alberta Securities Commission
8. Board of Directors of the Alberta Opportunity Company
9. Labour Relations Board
10. The Crimes Compensation Board
11. Driver Control Board
12. Energy Resources Conservation Board
13. Land Compensation Board
14. Law Enforcement Appeal Board
15. Local Authorities Board
16. Alberta Motor Transport Board
17. Provincial Planning Board
18. Public Utilities Board
19. Surface Rights Board
20. The Workers' Compensation Board

POOR

QUALITY

ORIGINAL